

1 REPORTER'S RECORD

2 VOLUME 24 OF 35 VOLUMES

3 TRIAL COURT CAUSE NO. 1384794

4 COURT OF CRIMINAL APPEALS NO. AP-77,025

5

6 OBEL CRUZ-GARCIA) IN THE DISTRICT COURT

)

7 Appellant)

)

8)

)

9 VS.) HARRIS COUNTY, TEXAS

)

10)

)

11 THE STATE OF TEXAS)

)

12 Appellee) 337TH JUDICIAL DISTRICT

13

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15 *****

16 PUNISHMENT PROCEEDINGS

17 *****

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19

20 On the 16th day of July, 2013, the following
21 proceedings came on to be heard in the above-entitled
22 and numbered cause before the Honorable Renee Magee,
23 Judge presiding, held in Houston, Harris County, Texas;24 Proceedings reported by computer-aided
25 transcription/stenograph shorthand.

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I N D E X
VOLUME 24
(PUNISHMENT PROCEEDINGS)

3 JULY 16, 2013

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1 (Open court, defendant not present, no
2 jury)

3 THE COURT: We're on the record in Cause
4 No. 1384794.

5 I just want to make it clear the defendant
6 is not present. And we can reiterate this on the record
7 when he is present at a later time, but the trial
8 attorneys for the State and for the defense are here.

I was approached this morning by a defense lawyer, Michael Casaretto, approximately 15 minutes ago. It's now 9:45. He stated that he was waiting for an elevator in the basement lobby of this building and he was waiting there with two individuals who had juror badges for our trial case here in the 337th District Court. One was an older man wearing a black chrome shirt and the second was a younger man with a long-sleeved white shirt with a window pane design on it. He said they were having what was possibly an innocuous conversation, but he wanted to alert the Court to the conversation that he overheard between the two jurors. So, I'm relating this to both of you to do whatever you want to with the information and make them available. He is obviously available if you need to speak to him further.

25 He stated that the two individuals were

1 speaking about people on the jury with struggles. It
2 was hard to hear them. He seemed -- they seemed to be
3 speaking about the case. The younger individual thanked
4 the older individual for words of encouragement
5 yesterday, which yesterday would have been July 15th,
6 2013. He said they seemed to be speaking about
7 struggling with the issues. There was nothing specific
8 about the issues discussed and they did not seem to be
9 conspiring. He said he could not tell if they were
10 actually talking about evidence. He said the
11 conversation went on for approximately five minutes and
12 that was while they were waiting on an elevator because
13 the elevator took a long time. Once they got on the
14 elevator, the conversation did not continue. Okay?

15 And that's all I have on that. What I
16 intend to do is, once again, admonishment strongly the
17 jury not to discuss the evidence or any deliberations or
18 any aspect of the deliberations outside the presence of
19 the jury where they are all seated together and are
20 supposed to be deliberating and leave it at that.

21 MR. CORNELIUS: You talked to the lawyer
22 yourself?

23 THE COURT: I did speak with the lawyer
24 myself. He asked to speak with me in chambers and so I
25 went back there and discussed it with him in chambers.

1 MR. CORNELIUS: Are you satisfied that
2 that's all the information he really has to give us?

3 THE COURT: That is all the information,
4 yes. And I said: Was there anything else? And I read
5 it back to him what my notes said here and he said:
6 Yes, that's it, that is exactly what I observed today.

7 And his name is Michael R. Casaretto. His telephone
8 number is 832-598-6387. He gave me his card and went on
9 to court. Basically, he said it probably or possibly
10 was innocuous and he wanted to report it just because --

11 MR. CORNELIUS: Let me write down his phone
12 number so I can call him. How are you spelling the last
13 name?

14 THE COURT: C-a-s-a-r-e-t-t-o.

15 MR. CORNELIUS: Phone number?

16 THE COURT: 832-598-6387.

17 MR. CORNELIUS: Okay. I will call him just
18 to make sure and put whatever he tells me on the record.

19 THE COURT: Okay. And so, I have read into
20 the record everything about my conversation and notes
21 that I took on the conversation. And so, I'm not going
22 to make my notes part of the record because I have read
23 everything verbatim as to what I wrote down.

24 MR. CORNELIUS: Yes, ma'am.

25 | THE COURT: Okay.

1 MR. CORNELIUS: Thank you.

2 MR. WOOD: Thank you, Judge.

3 (Open court, defendant and jury present)

4 THE BAILIFF: All rise.

5 THE COURT: Please be seated.

6 Back on the record in Cause No. 1384794,
7 the State of Texas vs. Obel Cruz-Garcia. And for the
8 record, the defendant is at counsel table with his
9 attorneys, Mr. Skip Cornelius and Mr. Mario Madrid.
10 Present for the State is Ms. Natalie Tise and Mr. Justin
11 Wood.

12 Ladies and gentlemen of the jury, at this
13 time, I have received and accepted your verdict finding
14 the defendant guilty of the offense as charged in the
15 indictment of capital murder. That brings to a close
16 the first phase of the trial and we are now ready to
17 proceed on the punishment phase of trial.

18 Once again, let me repeat: You are still
19 under all the instructions that I have previously given
20 in this case. And I want to remind you of the
21 admonishment that you should not talk amongst yourselves
22 or with anyone else on any subject connected with trial
23 or to form or express any opinion thereon until the end
24 of the trial. And specifically, I want to remind you
25 that not only should you not be speaking about the

1 evidence amongst yourselves or with anyone else, but
2 also any subject connected with the trial or your
3 deliberations on the trial. And I want to remind you
4 that that's not only an order of this Court, but that
5 any violation would be a violation of the order of this
6 Court or it could have serious ramifications to the
7 outcome of this case.

8 So, at this time, are we ready to proceed
9 with the punishment phase?

10 MS. TISE: The State's ready.

11 THE COURT: Defense ready?

12 MR. CORNELIUS: Defense is ready.

13 THE COURT: State, would you wish to make
14 an opening statement?

15 MS. TISE: I would, Judge.

16 THE COURT: You may proceed.

17 **STATE'S OPENING STATEMENT**

18 MS. TISE: Good morning.

19 JURORS: Good morning (in unison).

20 MS. TISE: Now is the time in the case
21 where we get to tell you the rest of the story and there
22 is a lot to tell. Rudy kind of hinted at it in the
23 first phase of the trial when you heard him talking
24 about that pantyhose mask that the defense made so much
25 of in his closing argument. Again, when the defense

1 made that point in closing argument, he only told you
2 half the story. If you remember what Rudy actually said
3 on the stand. He said: A pantyhose -- a mask like a
4 woman would wear on her legs. And then he said: But
5 I'm not sure, that may have been one of the other times
6 that I was remembering.

7 Ladies and gentlemen, you will find that in
8 the late 80s and early 90s, the defendant was not only a
9 drug dealer, but he had a second occupation and that was
10 breaking into people's houses in the night and stealing
11 from them. And one of his favorite targets was people
12 that sold for him and that he felt had slighted him in
13 some way, owed him some money, or who were not
14 completely loyal to him as a supplier.

15 You will hear about one specific instance
16 where a man named Bitico, was a dealer for the
17 defendant, was in his apartment in the middle of the
18 night when the defendant and Rudy went over. Rudy, as
19 was his practice, stayed down in the car. And that's
20 why the defendant liked to call him names and tell him
21 he was weak. The defendant went up to that apartment,
22 broke in. He tied up Bitico and raped Bitico's wife.
23 He came back downstairs and he told Rudy about it. And
24 Rudy will tell you that story today or tomorrow during
25 the course of punishment evidence.

1 In addition, you are going to learn that a
2 young man, 18 years old, named Saul Flores was dealing
3 for the defendant. And in 1989, they got crossways. It
4 looks like it was over money in part, but in addition,
5 Saul had flirted with a young woman who the defendant
6 was interested in having a relationship with. Not
7 Angelita, but one of the many women that he had on the
8 side. He was not going to tolerate that act of
9 disloyalty on Saul's part. He looked for Saul for a
10 period of time, he found him one time and beat him up,
11 but Saul was able to escape. But the next time that he
12 cornered Saul in the apartment where Saul had been
13 dealing from, Saul was not so lucky. And on that
14 occasion, the defendant tied him up, beat him
15 mercilessly, and killed him. Then he threw his body in
16 a bathtub in the apartment. And later when night fell,
17 he got a couple of guys to come and help him move him to
18 a dumpster where police found him.

19 That's not all. You are also going to
20 learn that even after 1992 when the horrible crime that
21 brought us here in the first place, the kidnapping and
22 murder of Angelo Garcia, Jr., the defendant did not
23 change, he did not learn his lesson. He went to Puerto
24 Rico and he continued his ways. In 2001, almost a
25 decade later, he was finally caught. On that occasion,

1 he went to a little sidewalk restaurant in Puerto Rico
2 owned by a guy name Manuel. Manuel had a little
3 business, a little taco truck type of establishment with
4 tables outside, that was doing very well. He bought a
5 very nice, brand-new flashy truck that he was often seen
6 riding around in the neighborhood on.

7 Manuel was at work behind the counter at
8 his business one day when the defendant came. He had a
9 few guys with him. He had a woman with him. They sat
10 down and they ate. And after they concluded their meal,
11 the defendant walked up to the counter where Manuel was
12 standing. When he got about 20 feet away, he pulled out
13 his gun. You will learn, ladies and gentlemen, that his
14 intention was to kidnap Manuel because he thought he had
15 money. But Manuel ran, was able to dodge the bullets,
16 and was able to get away.

17 So, the defendant's backup plan was he and
18 his friends who he had with him grabbed two of the
19 individuals who worked at the restaurant, a bus boy and
20 a waiter. Sixteen-year-old William is here today to
21 testify. And Andres, the waiter in the restaurant, is
22 also here. Those individuals were kidnapped by the
23 defendant at gunpoint and taken to another location.
24 Manuel's phone number, his cell phone and business
25 number, was on a placard outside on the sidewalk of his

1 business for taking phone orders. That number began to
2 receive calls, calls from Obel Cruz-Garcia, calls
3 telling him that his employees were going to be injured.
4 And it just so happens that William, the 16-year-old,
5 was Manuel's stepson. These calls continued and Manuel
6 got police involved. And they came up with a plan to
7 catch the defendant.

1 Remember, when Rudy testified and told you
2 about a time where the defendant thought he had been
3 disloyal and he tied him up and showed him what he could
4 do to him? And after beating him, he threw him in a
5 bathtub? You are going to hear about that. You are
6 going to hear that the defendant likes to tie people up.
7 You are going to hear that he likes to beat people. You
8 are going to hear that he likes to hit them on their
9 extremities with hammers and other tools. And you are
10 going to know that these unrelated cases with unrelated
11 victims are all victims of that man.

12 At the end of the case, Justin and I will
13 come to you and we're going to ask you to give him the
14 death penalty. We're going to tell you that the
15 evidence that you've been presented shows without a
16 doubt that Obel Cruz-Garcia is a danger to society. He
17 always has been, he always will be. Some people have
18 that kind of character, that kind of character where
19 they think nothing of hurting other human beings. And
20 you are also going to know at the end of this trial that
21 there is no sufficient mitigation. You will have heard
22 nothing that sufficiently mitigates not just all of the
23 crimes that you will have heard about, but just Angelo
24 Garcia, Jr.'s case alone. Nothing you will hear will
25 sufficiently mitigate that. And we'll ask you to answer

1 the special issues accordingly.

2 We thank you very much for your attention
3 and we look forward to presenting the rest of the case
4 to you.

5 THE COURT: Thank you, Ms. Tise.

6 Does the defense wish to make an opening?

7 MR. CORNELIUS: We'll reserve our right,
8 Judge.

9 THE COURT: Is the State ready to proceed?

10 MS. TISE: Yes, Your Honor.

11 THE COURT: Do you have any witnesses
12 present in the courtroom?

13 MS. TISE: I believe they are all in the
14 witness room.

15 THE COURT: Could you bring them in and
16 we'll swear them all at one time?

17 Does either side wish to have the Rule
18 invoked?

19 MR. CORNELIUS: Yes, Your Honor.

20 THE COURT: Please raise your right hands.

21 (Witnesses sworn)

22 THE COURT: The rule of exclusion of
23 witnesses -- you may lower your hands. The rule of
24 exclusion of witnesses has been invoked. All witnesses
25 except the parties are instructed to remain outside the

1 courtroom, to not discuss the case with anyone except
2 the attorneys, and to not read or listen to any report
3 of the testimony in the case until you are released as
4 witnesses.

5 You may go into the hallway at this time.

6 Who is your first, Ms. Tise?

7 MS. TISE: Manuel Buten.

8 THE COURT: Please take the stand, sir.

9 Mr. Buten, please keep your voice up and
10 speak directly into the microphone.

11 You may proceed, Ms. Tise.

12 **MANUEL BUTEN,**

13 having been first duly sworn, testified through the
14 interpreter as follows:

15 **DIRECT EXAMINATION**

16 **BY MS. TISE:**

17 Q. Would you please introduce yourself to the
18 jury, sir?

19 A. Manuel Buten.

20 THE COURT: You can have a seat, sir.

21 Q. (By Ms. Tise) And how old are you, Mr. Buten?

22 A. Forty-nine.

23 Q. And where are you from?

24 A. I'm a Dominican national.

25 Q. Okay. Where are you currently living?

1 A. In Puerto Rico.

2 Q. How long have you lived in Puerto Rico?

3 A. I arrived in '89, in 1989. So, about 23 years
4 approximately.

5 Q. Are you married?

6 A. No.

7 Q. Do you have children?

8 A. Yes.

9 Q. And among your children, do you have a stepson
10 named William?

11 A. Yes.

12 Q. And what do you call him?

13 A. William.

14 Q. Do you ever call him Willy.

15 A. Willy.

16 Q. Okay. Well, how do you support yourself?

17 A. Normal. As just a regular person. I have
18 income from my business.

19 Q. And that's what I want to talk to you about. I
20 want to talk about your business. What kind of business
21 are you in?

22 A. Food, seafood.

23 Q. Okay. And can you tell the jury a little bit
24 about your business establishment?

25 A. Yes. Well, briefly I have a food truck where I

1 sell seafood, mofango.

2 Q. And is mofango, is that a traditional Puerto
3 Rican dish?

4 A. Yes, it's a typical dish from Puerto Rico.

5 Q. Okay. And what kind of structure do you work
6 out of?

7 A. It's a wagon, like a truck that you haul. And
8 we turn it into a kitchen.

9 Q. Okay. And is it stationary at the time?

10 A. It's in a parking lot where people can come and
11 park their vehicles. And we pay rent.

12 Q. You pay rent there at the parking lot?

13 A. Yes.

14 Q. Okay. And do you ever move it from the
15 location that it's in or does it stay there pretty much
16 permanently in the same location?

17 A. It's always there and it has a canopy in case
18 it rains.

19 Q. Okay. And are there tables and places where
20 people can sit and eat their food that they buy from
21 your truck?

22 A. Yes. About five or six tables.

23 Q. Okay. And what city is that business located
24 in?

25 A. The name of the town where I was when it

1 happened, where the business was was Rio Piedras in San
2 Juan.

3 Q. Okay. And since the incident that we're going
4 to talk about today happened, have you reopened in
5 another location under another name?

6 A. Another business, yes.

7 Q. Okay. Tell us what the name of your business
8 is now.

9 A. The name today is Mari Tierra Restaurant.

10 Q. Okay. Back in 2001, what was the name of your
11 business?

12 A. El Tropical (phonetic).

13 Q. And was El Tropical basically the same type of
14 business that you've just described for the jury that
15 you are in now?

16 A. Yes, true.

17 Q. The same trailer that's parked in a stationary
18 place?

19 A. You mean currently?

20 Q. No. Back in 2001, is that the same situation
21 that you had?

22 A. Yes.

23 Q. Okay. And also back in 2001, did you also have
24 several tables outside the trailer where people could
25 sit?

1 A. Yes.

2 Q. And an awning out there to protect you from the
3 rain?

4 A. Yes.

5 Q. And that business in 2001, was it located on a
6 fairly busy street in San Juan?

7 A. Yes.

8 Q. So, how was business back in 2001?

9 A. Very well. It sold very well.

10 Q. Okay. And were you making really good money?

11 A. Yes.

12 Q. Were you able to buy yourself a pretty nice
13 truck?

14 A. A black truck, yes.

15 Q. It was pretty fancy, wasn't it?

16 A. Yes. I kept my truck pretty.

17 Q. Okay. Who was working for you back in 2001?

18 A. My brother, Andres Castillo Buten. My stepson,
19 William Garay Martinez, and I.

20 Q. Okay. And what was William's job?

21 A. Cook. He was very young, but since he was
22 under age, I used to take him to work with me in
23 construction because I used to work construction as
24 well. And then I would bring him also to work at the
25 truck.

1 Q. Okay. And what did Andres do for you at the
2 truck?

3 A. At that time, he was learning to cook.

4 Q. Okay. What kind of hours did this place stay
5 open?

6 A. We opened at 3:00 in the afternoon.

7 Q. Okay.

8 A. And we worked until 1:00 in the morning on
9 weekdays. And on weekends, we would do it until 3:00,
10 4:00, 6:00 in the morning depending on the clientele
11 that we had.

12 Q. On weekends in Puerto Rico, what time did the
13 bars close?

14 A. 2:30 in the morning.

15 Q. Okay. And after the bars closed, do you get a
16 lot of business from people coming from the bars to eat
17 at your restaurant in the night?

18 A. Yes.

19 Q. Okay. So, it's kind of like Whataburger in the
20 states? Never mind.

21 Let me ask you this. You said that it
22 varies when you close. Does that depend basically on
23 how much traffic you have?

24 A. How busy with the clients.

25 Q. Okay. I want to take you back to a day in

1 October of 2001 when something bad happened at your
2 business. Do you remember that day?

3 A. Can I give you a narrative of what happened
4 about everything?

5 Q. Unfortunately, we have to do question and
6 answer. That's the way the rules are.

7 A. Uh-huh.

8 Q. So, I want to take you back to that day in
9 October of 2001 and ask you: Who was at work that day?

10 A. In my business?

11 Q. Yes.

12 A. My brother Andres Buten.

13 Q. Okay.

14 A. And William Garay Martinez.

15 Q. Okay.

16 A. My brother's wife, who worked across the
17 street. By that time, she was already off and she was
18 there. She was there that day. And I.

19 Q. Okay. And is there a name that you call your
20 brother Andres, something that he is known as in the
21 family?

22 A. Johnny.

23 Q. Okay. So, it was you, Johnny, Willy, and
24 Johnny's wife. Is that right?

25 A. That's right.

1 Q. Okay. About what time of day are we talking
2 about when this incident occurred, rough estimate?

3 A. It was 8:30 p.m., approximately.

4 Q. Okay. And what were you doing at the time that
5 all of this happened?

6 A. I was preparing. I was cutting an octopus and
7 cleaning up.

8 Q. Okay. And octopus is something that you serve
9 at your restaurant?

10 A. Yes. That's part of the seafood that we serve
11 there.

12 Q. Okay. And do you remember what Johnny or
13 Andres was doing at that time?

14 A. Yes. Well, I was cleaning the octopus. They
15 were cooking and they were taking care of the customers,
16 Andres and William Garay.

17 Q. Okay. Both of them?

18 A. Yes.

19 Q. At some point, did an individual come up and
20 say something to you about the music?

21 A. Yes, ma'am.

22 Q. Okay. And was this individual a customer?

23 A. A customer? We thought it was a customer.

24 Q. Okay. And, actually, had this individual
25 ordered some food from you?

1 A. Yes.

2 Q. And was he alone?

3 A. No.

4 Q. Who was with him?

5 A. There was a young woman and -- at the time,
6 there was a young woman, but after the incident
7 happened, we assumed that everybody who was sitting
8 there in the business, all of those people were with
9 him.

10 Q. Okay. So, some other people who were sitting
11 at other tables came forward and seemed to assist him
12 when the incident happened. Is that what you're saying?

13 A. That's right.

14 Q. Okay. The first man -- the man who was with
15 the woman who had ordered food, after the food came, did
16 he approach you about the music?

17 A. Yes.

18 Q. Okay. What did he ask you? What did he say
19 about the music?

20 A. That the music was nice and that if I could
21 pump up the volume.

22 Q. Okay. And how did you respond to that?

23 A. To turn it up, he could turn it up. Because it
24 was right next to him from the place where he was
25 sitting.

1 Q. So, you told him to go ahead and turn it up?

2 A. Yes, he could do it.

3 Q. I want you to look here in the courtroom and
4 see if you see the individual who you remember from that
5 day who came up and asked you about the music.

6 A. Yes. Mr. Obel.

7 Q. Okay. And can you tell the Court what he's
8 wearing?

9 A. A gray sports coat and a blue shirt and a tie.

10 MS. TISE: Your Honor, may the record
11 reflect the witness has identified the defendant?

12 THE COURT: The record will so reflect.

13 Q. (By Ms. Tise) And you called him by the name
14 Obel, did you not?

15 A. Right now?

16 Q. You just now did.

17 A. Right now, I did.

18 Q. Uh-huh. Did you know his name back in 2001
19 when this happened?

20 A. No.

21 Q. Had you ever seen him before as far as you
22 knew?

23 A. No.

24 Q. Okay. Back in 2001, he asked you if he could
25 turn the audio up and you said yes?

1 A. Yes.

2 Q. What did he do after that?

3 A. He kept insisting -- he didn't turn it up, but
4 he kept insisting to turn up the radio.

5 Q. Was he trying to get you to come down from the
6 trailer to do it yourself?

7 A. For me to do it, that was his intention.

8 Q. Okay. And were you able to do that at the
9 moment?

10 A. No. Because my hands were full with the slime
11 from the seafood that I was cleaning. And when he kept
12 insisting, the guy told him: Well, you can do it, you
13 can turn up the radio, it's right there.

14 Q. Then what happened?

15 A. We prepared food for him and it was served at
16 his table.

17 Q. Who prepared the food for him?

18 A. The guys, Andres and William.

19 Q. Okay. And at the time, was the defendant
20 sitting at the table?

21 A. Yes.

22 Q. Who took him his food?

23 A. Andres.

24 Q. Okay. What happened next?

25 A. He ate with the other girl. Each one of them

1 had their own food. He continued talking to the young
2 woman and they kissed there at the table and some time
3 went by. And it came a point where he stood from the
4 table, he stood by the access window to the truck where
5 you can see the customers. And he said to me, looking
6 at my face, he said: You are the one who I wanted. And
7 he pulled out a .38 revolver plated and he pointed it at
8 me with the revolver and he fired twice, but the
9 revolver did not fire. And I threw myself quickly to
10 the floor.

11 Q. Let me stop you for a moment and ask you
12 another question. About how far was he from you when he
13 pulled that gun out and fired it?

14 A. Ten feet, approximately.

15 Q. Okay. And did it make a noise?

16 A. No, it didn't fire.

17 Q. So, how do you know he fired the gun at you?

18 A. Because it was right in front of my eyes. He
19 did it like this twice.

20 Q. And how did you feel when that happened?

21 A. Of course, scared because I threw myself
22 quickly to the floor and I took off running to the back.
23 I had the keys to my truck right here. And they fell
24 like 100 feet distance. And when I turned to pick up
25 the keys, he was pointing at me again. And I left the

1 keys to the truck and I left running again. I continued
2 running.

3 Q. Okay. What happened after that?

4 A. I got a few more meters away from that area and
5 my brother's wife called me and she said to me: Manuel,
6 come because they took the boys. And I called Willy's
7 mother -- Willy was 13 years old -- and she came over.

8 Q. Let me stop you for a minute. So, you get a
9 phone call from Andres' wife --

10 A. Yes, she called me.

11 Q. -- saying they took the boys?

12 A. Yes.

13 Q. When the defendant came up and pulled the gun
14 on you, did you noticed something from some of the other
15 men that were seated at the tables in your restaurant
16 area?

17 A. They were at different corners by couples, but
18 none of them ordered food.

19 Q. Okay. Did they seem to be there assisting the
20 defendant, Obel Cruz-Garcia?

21 A. That's my understanding. After that happened,
22 that's what I thought, taking care of that. The police
23 won't be close or anything. And I turned when she told
24 me that they had taken the boys.

25 Q. Okay. What happened then?

1 A. I waited for my wife to arrive who's Willy's
2 mother.

3 Q. Okay.

4 A. And we started searching for them everywhere
5 and all the surrounding area without knowing where they
6 had been taken to.

7 Q. And did you call the police?

8 A. I called the police patrol that passed by at
9 that time.

10 Q. Okay. And did they assist you?

11 A. After we got tired of looking for them
12 everywhere, I went with Willy's mother.

13 Q. Okay. And did you go to the police station?

14 A. It was about 11:00 p.m. when we went to the
15 police station.

16 Q. Okay. So, that's when you went in to make your
17 official report?

18 A. Yes. So, he called my telephone.

19 Q. Okay. And I'm going to ask you about that.
20 When did you get the first phone call?

21 A. Before going to the station.

22 Q. Okay. So, my understanding is that y'all
23 flagged down a police officer and y'all were looking in
24 the area for William and Andres?

25 A. Uh-huh.

1 Q. And then later on when you were going to make a
2 report to the police station, before you got there you
3 got a phone call?

4 A. A call, yes.

5 Q. Okay. And what was -- well, let me ask you
6 first: Do you know how the individual could have gotten
7 your phone number, the individual who called you?

8 A. Yes. We had a little board. It's like a
9 sandwich board and that's where we advertised the name
10 of the business and the telephone number was there and
11 the people would order through that.

12 Q. And that number that was on that sandwich
13 board, was that the number to your cell phone?

14 A. Yes. It was there and people will call to
15 order their food.

16 Q. Okay. So, can you tell the jury about that
17 first phone call?

18 A. Yes.

19 Q. Who made that call?

20 A. Mr. Obel.

21 Q. Tell the jury what he said.

22 A. He asked for my name. He said: Are you the
23 Colombian with the black truck? And I said to him: I'm
24 a Dominican just like you.

25 Q. Okay.

1 A. And then he said to me: I want you to get
2 2 kilos of drugs for me in order to release the boys.
3 And I said to him: What I sell is mofango and fried
4 plantain.

5 Q. Okay. Do you have any --

6 A. So, then he hands the phone to a young woman
7 who was with him and she said to me: If what you sell
8 is mofango and fried plantain, then that's the way we
9 are going to return them to you. We're going to return
10 them as mofango and chopped meat.

11 Q. Did he ever ask for any money in this first
12 phone call?

13 A. No, not the first call.

14 Q. Mr. Buten, have you ever had any involvement in
15 the drug trade?

16 A. No.

17 Q. And you've never committed a crime, have you?

18 A. Never.

19 Q. Did you know where you were supposed to get
20 2 kilos of cocaine?

21 A. No.

22 Q. And did you have access to that kind of money?

23 A. No.

24 Q. What did you do?

25 A. At that moment, my wife was with me and she

1 said to me: This is getting serious, you should go to
2 the station.

3 Q. Okay.

4 A. And we went to the police station.

5 Q. And who did you interact with there at the
6 police station?

7 A. We talked to the sergeant who was on duty.

8 Q. Okay.

9 A. And they called the bank robbery department and
10 two FBI agents came over. And two officers from the
11 bank robbery department, including Officers DeJesus and
12 Melvin Torres.

13 Q. Okay. And did you tell those officers what had
14 happened?

15 A. Everything.

16 Q. What happened next?

17 A. He called me again while in their presence.

18 Q. Okay. And when you say "he called you," who
19 are you referring to?

20 A. Obel Cruz-Garcia.

21 Q. Okay. And did you share that call with the
22 police officers you were working with?

23 A. Yes.

24 Q. Okay. At any point in time did Obel
25 Cruz-Garcia, the defendant, tell you anything about

1 going to the police?

2 A. Yes.

3 Q. When did that happen?

4 A. In the presence of the officers.

5 Q. Okay. So, you had already --

6 A. Because -- well, he didn't know that I was at
7 the police station. I was hiding that from him.
8 Because he threatened me with killing the boys if I
9 would go to the station.

10 Q. Okay. And so, you didn't tell him you were at
11 the police station?

12 A. Never.

13 Q. But you took that call in the presence of
14 Sergeants DeJesus and Torres, correct?

15 A. That's right.

16 Q. And did they listen in on the conversation?

17 A. Yes.

18 Q. Okay. What else did he tell you in that phone
19 call?

20 A. He said to me: Do you have what I asked you?
21 And Officer DeJesus said to me: Tell him you do, tell
22 him you do. And I told him, I said to him I did. And
23 then he said to me: And who said to you that that's
24 what I want? So, at that point he said to me: You are
25 going to get for me -- you are going to give me 75 kilos

1 and 150,000 cash.

2 Q. How did you respond to that?

3 A. I said to him -- DeJesus said to me: Tell them
4 that you have, tell him that you have it. That's what
5 he said to me.

6 Q. And did you do that?

7 A. Yes. And I would respond to him, yes, that I
8 have it, but asking him where I could turn it in.

9 Q. Okay. Then what happened?

10 A. He didn't speak much and he shut the phone and
11 he will call later on to make an appointment so he could
12 receive what he was asking. So, the officers took me to
13 the general police station.

14 Q. Then what happened?

15 A. There at the table they put the telephone on a
16 machine where you can -- everybody could listen to the
17 conversation. And as the calls were coming in, the
18 conversation could be heard.

19 Q. And did that happen?

20 A. Yes. Then he called again. He called again in
21 the afternoon.

22 Q. Okay.

23 A. Yes. And I took the call and I said to him: I
24 need you to tell me where the boys are and I need you to
25 put them on the phone so I can know that they are alive,

1 so I can give you what you are asking.

2 Q. And what happened after you said that?

3 A. He put Willy on the phone. He was crying on
4 the phone. And I told him not to worry and to keep
5 calm. And then he put Johnny on. And I was aware they
6 were both alive, but they were both crying.

7 Q. What happened next?

8 A. After he finished -- after Johnny finished, he
9 shut the phone. And then latter he called me. He
10 called again around 10:00 at night.

11 Q. And when you say -- you said that call you just
12 described was in the afternoon. Are we talking the next
13 day after the day they were taken from your restaurant?

14 A. Yes, the next day.

15 Q. Okay. So, that call where you just described
16 where they put Willy and Andres on the phone crying,
17 that was a call from Obel Cruz-Garcia?

18 A. Yes.

19 Q. And it happened the afternoon after the
20 kidnapping?

21 A. Exactly. On the next day.

22 Q. And now we're talking about that evening, I
23 believe you said around 7:00, correct.

24 A. Uh-huh.

25 Q. You got another call?

1 A. Yes.

2 Q. And what was the nature of that call?

3 A. He called me again setting an appointment in
4 front of a police station because I was telling him:
5 How do I know that nothing is going to happen to me,
6 that you are not going to do anything to me? So, he
7 said to me: You stand right -- you stand right in front
8 of that police station. And the police officers who
9 were there -- right there that moment prepared me so I
10 would go and give him what he wanted.

11 THE INTERPRETER: Your Honor, may I have a
12 minute to visit with my colleague?

13 THE COURT: Yes. Let's take just a short
14 break. Take the jury out.

15 MS. TISE: Judge, I believe one of the
16 jurors had a concern.

17 JUROR: He needs to speak up a little bit.
18 I can't hear him.

19 THE COURT: Okay.

20 THE BAILIFF: All rise.

21 (Recess)

22 (Open court, defendant and jury present)

23 THE COURT: Please be seated.

24 We're ready to proceed in Cause No. 1384794
25 with the testimony of Mr. Manuel Buten.

1 We have provided the interpreter with
2 another microphone so as to make it easier for y'all to
3 hear. And in the future, if you have any issues like
4 that, just raise your hand and I will talk to you. The
5 lawyers are not allowed to talk to you directly or
6 indirectly except through the presentation of evidence.

7 All right. Are we ready proceed?

8 MS. TISE: Yes, Judge.

9 THE COURT: You may proceed, Ms. Tise.

10 Q. (By Ms. Tise) Okay. I want to go back to the
11 question I asked you before we took the break. I asked
12 you about another one of the phone calls that came in at
13 the police station. Okay? That call we were talking
14 about, again, who was on the other end? Who was making
15 the call to you?

16 THE COURT: Let me stop you. Can everyone
17 hear that okay? Is it better?

18 JUROR: No.

19 THE COURT: Rolando, on your responses,
20 speak into that microphone right there by the jury.

21 Proceed, Ms. Tise.

22 Q. (By Ms. Tise) That phone call, who was on the
23 other end?

24 A. Obel Cruz-Garcia.

25 Q. And in that phone call, did y'all talk any more

1 about your family members that he had taken?

2 A. Yes.

3 Q. And can you tell us about that?

4 A. Yes, sure. When he made that phone call, the
5 police officers had already advised me about how to
6 answer to him whenever he called. He continued
7 threatening me that he was going to kill the boys if I
8 have link or if I was inside a police station.

9 Q. Okay.

10 A. And DeJesus said to me not to be scared of him,
11 to answer to him also tough.

12 Q. To answer tough?

13 THE INTERPRETER: Interpreter correction.
14 To answer rough.

15 Q. (By Ms. Tise) Rough. Okay.

16 A. Yes.

17 Q. And did you try to do that?

18 A. Yes. I didn't argue directly with him, but I
19 talked to him regarding I wanted a guarantee before I
20 give him -- before giving him what he was asking for.
21 And he got upset and then he said if I continue -- I
22 mean, if I did not give him what he was asking at that
23 point, that I could say good-bye to my family. And he
24 shut the phone.

25 Q. Okay. Do you remember a phone call where he

1 told you that you would see your family on the news?

2 A. Yes.

3 Q. When did that phone call happen?

4 A. That was the last call he did to me.

5 Q. Okay. So, not the one we just talked about?

6 A. No.

7 Q. Okay. So, in the one that we just talked
8 about, he told you that if you didn't give him the stuff
9 he was going to kill your family?

10 A. Yes.

11 Q. Okay. What happened next?

12 A. After 20 -- approximately between 15 and 20
13 minutes after the next call.

14 Q. Okay.

15 A. It was already about 9:00 p.m.

16 Q. What happened in that call?

17 A. We talked a lot because he called me and
18 DeJesus had already told me what needed to be done. So,
19 the officers took me to the place right there within the
20 station, they put me inside a car.

21 Q. Okay.

22 A. We started the car and I will tell him that I
23 was at a specific area, driving the car heading -- and
24 to arrive to the place where he wanted to see me and
25 where I will turn in what he was asking. He was waiting

1 at a certain place and I told him I was at a small town
2 which was close to a place where he wanted to meet with
3 me. This was imaginary because I was inside the police
4 station with the car running.

5 Q. Let me stop you and clarify that a little bit.

6 So, is it fair to say that you and DeJesus
7 and the police came up with a plan?

8 A. Yes.

9 Q. And the plan was to try to trick the defendant
10 into thinking you were coming to meet with him with what
11 he asked for?

12 A. And that I was out on the street the whole
13 time.

14 Q. Okay.

15 A. And he was inside the police station and I was
16 honking the horn and I was arguing with other drivers
17 that were around me imaginary.

18 Q. Okay. So, how was the car inside of the police
19 station?

20 A. A Mitsubishi -- no. Excuse me. A Suzuki
21 Baleno, gray color.

22 Q. Are you talking just outside the police
23 station?

24 A. Outside the building, but at the parking lot.
25 By the parking lot inside the station.

1 Q. Okay. So, you were in an actual car out in the
2 parking lot outside the police station?

3 A. Yes.

4 Q. But you weren't driving?

5 A. No.

6 Q. But were you doing things to make him think,
7 while you we're talking to him, that you were driving?

8 A. Yes, that's right. And I delayed -- I said to
9 him that I was at a town which was far in order to give
10 time to the police to arrive to the place where he
11 wanted to see me. And the officers surrounded the area
12 more or less where he wanted to meet with me while I was
13 talking on the phone with him.

14 Q. Okay.

15 A. He ran out of patience and then he said why was
16 he not seeing the car if I was close. And I said to
17 him: Release the boys, I have what you want, I'm here
18 under a tree. And he said to me: I don't see you, I
19 don't. And when he didn't see me, I said to him:
20 Release the boys and then I will meet with you and give
21 you what you want.

22 Q. What happened?

23 A. And the officers were already in that area and
24 I think they found the person who was talking on the
25 phone in the car.

1 Q. Okay.

2 A. They chased the person and the car crashed.

3 Q. Okay. And I'm going to take you back before we
4 talk about that. Okay? Because some things were said
5 in that phone call by Obel Cruz-Garcia that I think the
6 jury should hear.

7 A. Yes.

8 Q. Can you tell the jury what he was saying to you
9 about your family?

10 A. He said to me: I'm not going to show you the
11 boys. And if you continue with that same bullshit, you
12 are going to see your family tomorrow in the newspaper.

13 Q. Okay. Did he continue, in that phone call, to
14 threaten your family members?

15 A. No. He shut the phone. He didn't want to
16 listen to me anymore and he shut the phone.

17 Q. Okay. And was that the phone call while you
18 were in the car pretending to be driving?

19 A. We were waiting for DeJesus to call, but at
20 that moment one of the officers called the station and
21 somebody said that they had found the subject in that
22 same area.

23 Q. Okay. And later on, were your family
24 members -- were you able to get them back?

25 A. A few hours later, they were released.

1 Q. Okay. Now, all of these phone calls and all of
2 this stuff that happened while you were at the police
3 station took place over the course of several days, did
4 it not?

5 A. Yes. I never, at any point, left the police
6 station.

7 Q. And you were there the whole time getting those
8 phone calls from the defendant, correct?

9 A. That's right.

10 Q. How long were your family members kidnapped?

11 A. One whole night, the next day, the whole day
12 until the next night of the following day.

13 Q. Almost three days, correct?

14 A. That's right.

15 Q. And so, those calls we have been talking about
16 were spanned out over the course of that time?

17 A. That's right.

18 Q. Okay. When William and Andres or Johnny got
19 released, what condition were they in?

20 A. Their faces were swollen. And Willy had marks
21 on his face where -- where he was hit with a knife.
22 Johnny's head was this big because he was hit with a
23 pipe on his head. Willy had a cut like this from a
24 pipe. And Willy and Johnny's toes were smashed with a
25 hammer, a sledge hammer that you use to break concrete.

1 And they were taken to the hospital.

2 Q. Does Johnny still walk with a limp?

3 A. Yes. His toe is useless. Because when he
4 walks, that's how it is.

5 Q. What kinds of emotional issues have they had
6 since this happened that you are aware of?

7 A. Persecution, nervousness. I mean, William --
8 Willy was a kid, Willy was a baby. He feels insecure
9 with his children. Now he has children and I have both
10 of mine. I lost my business. I couldn't go back to my
11 job anymore because I was afraid that something like
12 that would happen to me. I was not able to continue
13 paying for the new truck and I lost it as well. And
14 Willy, he still suffers from persecution because he
15 feels that somebody is after him the whole time, that
16 somebody is coming after him to kill him.

17 MS. TISE: I will pass the witness.

18 THE COURT: Mr. Cornelius.

19 MR. CORNELIUS: Could I have just a moment,
20 Judge?

21 THE COURT: Yes.

22 (Pause)

23 MR. CORNELIUS: Judge, we're going to
24 reserve our right to cross at this point.

25 THE COURT: May the witness be excused at

1 this point subject to recall?

2 MR. CORNELIUS: Yes, Your Honor.

3 MS. TISE: Yes, Your Honor.

4 THE COURT: You may step down, sir.

5 Please call your next.

6 MS. TISE: I will call Sergeant DeJesus.

7 Agent DeJesus is the correct title.

8 THE COURT: Well, will the witness be a
9 long witness?

10 MS. TISE: He will be a long witness.

11 THE COURT: We're going to take a break at
12 12:30. So, let's proceed.

13 Officer DeJesus, please keep your voice up.
14 And speak directly into the microphone.

15 THE BAILIFF: The witness was sworn, Your
16 Honor.

17 THE COURT: Thank you.

18 You may have a seat.

19 You may proceed, Ms. Tise.

20 **JUAN DEJESUS RODRIGUEZ,**

21 having been first duly sworn, testified through the
22 interpreter as follows:

23 **DIRECT EXAMINATION**

24 **BY MS. TISE:**

25 Q. Would you introduce yourself to the jury,

1 please, sir?

2 A. Good afternoon. My name is Agent Juan DeJesus
3 Rodriguez. And I work with the police of Puerto Rico.

4 Q. Okay. Can you tell the jury a little bit about
5 your background and training?

6 A. I started working for the Puerto Rico police in
7 1990. And I received six months training. After six
8 months, I graduated as an officer. And I have a degree
9 in criminal justice, a bachelor's degree. And I work at
10 the Robbery and Bank Fraud Division and the Kidnapping
11 Unit. Right now currently, I work at the office of task
12 force and I belong to a group of agents who investigate
13 criminal cases with a federal agency in Puerto Rico.

14 Q. And is your correct title Agent DeJesus?

15 A. Agent.

16 Q. Okay. And you mentioned that you worked for a
17 period of time in a department that specialized in bank
18 robberies and kidnappings, correct?

19 A. Yes.

20 Q. And I want to talk to you a little bit about
21 the kidnapping part of that unit where you were
22 assigned.

23 A. Yes. Currently, I work also for a federal
24 agency on kidnapping cases in Puerto Rico.

25 Q. Okay. And I want to ask you: Is it fair to

1 say, Agent DeJesus, that kidnapping cases happen with
2 some fair frequency in Puerto Rico?

3 A. Yes.

4 Q. Compared to the United States, that's something
5 that y'all are fighting all the time over there?

6 A. Okay.

7 Q. And so, you actually have a special unit to
8 deal with those cases, correct?

9 A. Yes.

10 Q. And is there a protocol that y'all follow for
11 those types of cases or is it something that you just
12 developed over the years from your experience?

13 A. That type of investigation develops over the
14 years.

15 Q. Okay. And so, is it -- have you been involved
16 in those types of situations?

17 A. Yes.

18 Q. I want to take you back to October of 2001 and
19 ask you about a kidnapping case that you were involved
20 in involving the defendant, Obel Cruz-Garcia.

21 A. Yes.

22 Q. Do you see the defendant, Obel Cruz-Garcia, in
23 the courtroom today?

24 A. Yes.

25 Q. Can you point him out to the jury and describe

1 an article of clothing that he is wearing?

2 A. He has a gray or bluish suit, a blue shirt, and
3 a tie, a grayish tie.

4 MS. TISE: Your Honor, may the record
5 reflect the witness has identified the defendant?

6 THE COURT: The record will so reflect.

7 Q. (By Ms. Tise) Can you tell us how you got
8 involved in that case involving the defendant in 2001?

9 A. Yes. On October 11th of 2001 at approximately
10 11:00 p.m., the Puerto Rico police received a report
11 about a kidnapping that occurred with two young men.

12 Q. Okay.

13 A. In that report, Mr. Manuel Buten is filing a
14 report with the police that Andres Buten, his brother,
15 was kidnapped, and William Garay, who is a minor.

16 Q. Okay. And in response to that report, what did
17 you do?

18 A. I began with the investigation of that
19 kidnapping. Mr. Buten, Mr. Manuel Buten is receiving
20 telephone calls from the kidnappers and they are asking
21 for a ransom in exchange for their freedom.

22 Q. Okay. And how did you assist with that?

23 A. I instructed Mr. Manuel Buten regarding the
24 telephone calls to have control over the case.

25 Q. Okay. And what instructions did you give?

1 A. The people were asking for 75,000 cash and 150
2 kilos of cocaine.

3 Q. Okay. Did you, as part of your investigation,
4 make arrangements for Mr. Buten to come to your office?

5 A. Mr. Buten came to our office.

6 Q. Okay.

7 A. He continued receiving telephone calls.

8 Q. And were y'all monitoring those calls that he
9 received while he was there at your office?

10 A. We were trying to monitor those calls, but the
11 telephone was prepaid and it belonged to -- the calls
12 could not be identified.

13 Q. Okay. So, as far as the numbers, you couldn't
14 trace them?

15 A. No.

16 Q. So, when you say the telephone was prepaid, you
17 are talking about the telephone that the calls were
18 coming in from?

19 A. Yes.

20 Q. Okay. So, when the calls were coming in, was
21 there a way that you were able to listen in on the
22 calls?

23 A. No.

24 Q. You weren't able to hear any of the calls? Did
25 you hook it up to a speaker phone?

1 A. No. At that point, we didn't have the
2 necessary equipment to listen to the calls and to trace
3 the calls. Mr. Manuel Buten was indicating to me what
4 the subjects were indicating to him.

5 Q. Okay. What happened next?

6 A. He continues negotiations with the subject.
7 And on the night of October 12th, they reached an
8 agreement, Mr. Buten with the subjects.

9 Q. Okay. And during the course of all of these
10 negotiations that have come in on the phone, you are
11 present?

12 A. Yes.

13 Q. And you are aware of the subject of the calls
14 or the substance of the calls?

15 A. Yes.

16 Q. And were you advising Mr. Buten about how to
17 respond to some of the things that were being said?

18 A. Yes.

19 Q. Okay. So, you said on the night of
20 October 12th they came up -- they came to an agreement,
21 Mr. Buten and the person who was calling him?

22 A. Yes.

23 Q. What was that agreement?

24 A. They agreed to receive 100 -- \$50,000 and 100
25 kilos of cocaine.

1 Q. Okay. And were you part of that negotiation
2 process, where y'all were trying to talk him down on the
3 amount of drugs and the amount of money?

4 A. Yes.

5 Q. And what was your meaning? Why were you doing
6 that, trying to talk him down on the amount?

7 A. To gain time, to make a plan of action to
8 rescue the boys.

9 Q. Okay. What happened next?

10 A. After Mr. Buten indicated to me there were
11 signs of life because the subjects put Willy and Andres
12 on the phone --

13 Q. Okay.

14 A. -- I told Mr. Manuel Buten to indicate to them
15 that we were prepared to negotiate.

16 Q. Okay. And did he do that?

17 A. Yes.

18 Q. What happened next?

19 A. We continued with the plan and a task team was
20 formed with agents.

21 Q. Can you tell us what your plan was?

22 A. On the night of October 12th, at the avenue
23 between San Juan and Katalina (phonetic), several
24 confidential vehicle were found --

25 THE INTERPRETER: I'm sorry. Correction.

1 A. -- several unmarked vehicles were found --

2 THE INTERPRETER: I'm sorry. Interpreter
3 correction.

4 A. -- several points in that route were found.

5 Q. (By Ms. Tise) Okay.

6 A. I was telling Mr. Manuel Buten to tell the
7 subjects you are in a vehicle looking for them to give
8 them what they asked for.

9 | Q. Okay.

10 A. Excuse me.

11 Q. At some point, was your plan to involve
12 Mr. Buten in the exchange of a fake package to Obel
13 Cruz-Garcia?

14 A. Yes.

15 Q. Okay. And what happened with that -- well,
16 first of all, did y'all go through the steps of actually
17 outfitting him with a bullet-proof vest?

18 A. Yes.

19 Q. Okay. What happened to that plan?

20 A. That plan was not authorized by my supervisors
21 because it put Mr. Manuel Buten's life at risk, in spite
22 that I was going to be accompanying him. There was a
23 change of plan using the cell phone Manuel located in
24 our police station and he was indicating to him that he
25 was on that avenue, between San Juan and Katalina and he

1 was looking for him in order to give him the money and
2 the drugs.

3 Q. Okay. So, is it fair to say that your backup
4 plan was to have Mr. Buten pretend that he was on -- in
5 a certain area of town?

6 A. Yes.

7 Q. And he was telling them that he had the drugs
8 and the money to give to the defendant, Obel
9 Cruz-Garcia?

10 A. Yes.

11 Q. So, how did that -- how was that planned
12 implemented?

13 A. Well, we indicated to the subjects over the
14 telephone that he was on the aforementioned avenue, but
15 it was not true. He was with me at the police station.
16 And the plan was to try to identify the vehicle that the
17 subjects were riding to pick up the money.

18 Q. Okay. And how were y'all planning to be able
19 to identify the vehicle that was looking to meet with
20 Mr. Buten?

21 A. As I previously mentioned, on that avenue we
22 posted five vehicles with agents. Mr. Buten was telling
23 the subjects over the telephone that he was on that
24 avenue looking for them but couldn't find them. And the
25 strategy was that the agents would identify a vehicle --

1 a possible vehicle where these subjects were to pick up
2 the money and the drugs.

3 Q. So, what were the agents told to look for?
4 What kind of vehicle? What were they looking for a
5 vehicle doing that was going to trigger who they were
6 looking for?

7 A. A vehicle that will call their attention on
8 that avenue that was riding a lot.

9 Q. Okay. What do you mean by that?

10 A. It means that when they're doing the
11 negotiations, when Manuel is telling these subjects that
12 I'm in this area, they are moving around in that area.
13 And there are some agents watching. They contact me
14 over the phone and I was told that a vehicle -- a
15 four-door vehicle was detected with two subjects with
16 suspicious actions, with suspicious behavior
17 (indicating).

18 Q. Okay. Let me stop you. And you did this with
19 your hand (indicating). Is it fair to say you were
20 looking for a vehicle that was going back and forth, up
21 and down that street over and over again?

22 A. Yes. I was telling Manuel to tell the subjects
23 that he was on that street, but that was not true.

24 Q. Okay. And he was doing more than just telling
25 them that. He was doing things in the car that was

1 parked to make them think he was driving, wasn't he?

2 A. Yes.

3 Q. What kind of things was he doing?

4 A. I had him in the parking lot of the station
5 sitting in a car and I would indicate to him to honk the
6 horn and to step on the gas and turn on the radio, to
7 step on the gas of the vehicle so they will think that
8 he was out on the street looking for them.

9 Q. And how long did this ruse last?

10 A. That lasted about an hour, an hour-and-a-half.

11 Q. Okay. And so, your five agents that were in
12 the unmarked vehicles out on the street were looking for
13 a car that appeared to be going back and forth looking
14 for Mr. Buten?

15 A. Yes.

16 Q. And were they able to identify a car that was
17 doing just that?

18 A. The agents identified the vehicle that was
19 looking for Mr. Buten.

20 Q. Okay. And what did they do in response?

21 A. The vehicle was a gray Ford Taurus, four-door.
22 And I indicated to them to return with that vehicle.

23 Q. Okay.

24 A. When the officers made signals as police, when
25 they turned on lights and identified themselves as the

1 police, a chase started because they did not stop for
2 the police.

3 Q. The individuals in that gray Ford Taurus?

4 A. Yes.

5 Q. Then what happened?

6 A. On that avenue between San Juan and Katalina,
7 the individuals lost control, they crashed, and two
8 individuals came out running. They went to some bushes
9 and trees.

10 Q. Okay.

11 A. And the agents continued searching for the
12 individuals.

13 Q. All right.

14 A. And they found one of them up on a tree hiding.

15 Q. And who was the individual they found hiding in
16 the tree?

17 A. That individual was identified as Obel
18 Cruz-Garcia.

19 Q. Okay. What happened next?

20 A. That vehicle was taken by the police. Mr. Obel
21 Cruz-Garcia was detained and he was transported to our
22 offices in order to be interviewed.

23 Q. And did you interview him?

24 A. I was present at the interview with Agent
25 Melvin Torres.

1 Q. Did Obel Cruz-Garcia admit to you that he was
2 involved in the kidnapping of William Garay and Andres
3 Buten?

4 MR. CORNELIUS: Judge, can we approach the
5 bench before that?

6 THE COURT: Yes.

7 (At the Bench, on the record)

8 MR. CORNELIUS: I'm not a hundred percent
9 sure what the law is on that in -- well, I think --

10 THE COURT: We'll go ahead and break.

11 (Open court, defendant and jury present)

12 THE COURT: Let's go ahead and break for
13 lunch.

14 Deputy Perry? Where is Deputy Perry?

15 THE BAILIFF: I'm right here.

16 THE COURT: All right. Members of the
17 jury, we're going to break for lunch now. We'll take
18 one hour. So, be back at 1:30. You are reminded that
19 you should not talk amongst yourselves or with anyone
20 else on any subject connected with the trial or to form
21 or express any opinion thereon until the end of the
22 trial.

23 You are released until 1:30.

24 THE BAILIFF: All rise.

25 (Open court, defendant present, no jury)

1 THE COURT: You may be seated.

9 MS. TISE: I can. I know that he
10 Mirandized him and --

11 MR. CORNELIUS: Oh, he did?

14 MR. CORNELIUS: Then we probably are.

15 MS. TISE: And I will -- I should have gone
16 into that more detail. And I will. I know from talking
17 to him, though, he Mirandized him.

18 THE COURT: Okay.

19 MR. CORNELIUS: All right.

20 THE COURT: Let's just meet back about 1:20
21 after you've had lunch and we'll make sure all of that
22 is in line. Okay?

23 MS. TISE: Okay.

24 | THE COURT: We're in recess.

25 (Lunch recess)

1 (Open court, defendant present, no jury)

2 THE COURT: Ms. Tise, before you offer any
3 further statement from this defendant, you're going to
4 go into how the statement was taken, and if Miranda
5 was --

6 MS. TISE: I may not even go there, Judge,
7 because I have the judgment and stuff. So, I may go
8 into that instead.

9 THE COURT: Okay.

10 MS. TISE: But he did give Miranda and is
11 prepared --

12 MR. CORNELIUS: She's resolved it in my
13 mind if she wants to go into or whatever she decides.

14 THE COURT: Okay. Very good. So, re-ask
15 that question on the record.

16 MS. TISE: I'm just going to start in with
17 where we were at that point in time, where we ended.

18 THE COURT: I'll just say that you may
19 proceed then.

20 (Open court, defendant and jury present)

21 THE COURT: Please be seated.

22 Back on the record in Cause No. 1384794,
23 the State of Texas vs. Obel Cruz-Garcia.

24 The jury is present in the courtroom.

25 Mr. Cruz-Garcia is present at counsel table with his

1 lawyers. And the prosecution is represented by Ms. Tise
2 and Mr. Wood.

3 We currently have the witness Officer Agent
4 DeJesus on the stand.

5 Are you ready to proceed, Ms. Tise?

6 MS. TISE: I am, Judge.

7 THE COURT: You may proceed.

8 Q. (By Ms. Tise) When we broke, Agent DeJesus, we
9 had just gotten the defendant, Obel Cruz-Garcia, into
10 custody. Do you remember that?

11 A. Yes.

12 Q. And he was brought down to your station to
13 interview, correct?

14 A. Yes.

15 Q. At some point after the interview, did you try
16 to convince him to make arrangements to let Andres and
17 William go?

18 A. After we read him his rights to interview him.

19 Q. Okay. And you interviewed him, right?

20 A. Together with my partner, Melvin Torres.

21 Q. Okay. And at some point, did you convince him
22 to let Andres and William go?

23 A. Yes.

24 Q. How did that happen?

25 A. After I explained to him -- I read him his

1 rights and I explained to him the situation which he was
2 in, because one of the persons kidnapped was a minor.
3 He asked to make a telephone call to his wife in order
4 to contact the subjects who had kidnapped -- were
5 keeping them at the house --

6 Q. And --

7 A. -- to release them.

8 Q. I'm sorry.

9 And can you tell me the name of his wife
10 that he contacted?

11 A. I don't remember at this point.

12 Q. Okay. But it was whoever he was married to in
13 2001?

14 A. That's my understanding.

15 Q. After the phone call, did William and Andres
16 get released?

17 A. Yes.

18 Q. Can you tell us how that happened?

19 A. He got in contact via telephone with Pablo
20 Estevez, which was another one of the subjects.

21 Q. Okay.

22 A. And they were released.

23 Q. When the complainants were released, did you
24 have an opportunity to see them?

25 A. Yes.

1 Q. Where were they released to?

2 A. They were released at a street nearby a
3 subdivision named Country Club.

4 Q. Okay.

5 A. They ran to -- they ran to Avenue 65 and
6 Infanteria.

7 Q. Okay.

8 A. Which was passing some patrol cars --

9 THE INTERPRETER: No. Interpreter
10 correction.

11 A. When some patrol cars were passing by, Andres
12 and William stopped the patrol car and they indicated
13 that they were kidnapped and they were released.

14 Q. (By Ms. Tise) So, basically, they just got
15 dropped off on a street somewhere?

16 A. Yes.

17 Q. What injuries did you observe on William and
18 Andres?

19 A. When they were taken to the police station
20 where I work, the paramedics were called because they
21 had injuries in different parts of their body. William
22 had marks on his face and on his head. He was bleeding.
23 And Andres had marks in his mouth area and on one leg.
24 After the paramedics checked them, they were taken to
25 the hospital to perform the analysis.

1 Q. Okay. At some point, did you learn of the
2 location of the place where Andres and William were
3 being held?

4 A. Yes.

5 Q. Okay. And were you able to go to that location
6 and take some photos?

7 A. Yes.

8 Q. Okay.

9 MS. TISE: May I approach?

10 | THE COURT: Yes.

11 Q. (By Ms. Tise) I'm going to show you State's
12 Exhibit 101 through 104. Actually, 101 through 103.
13 I'll ask you if those are photos that were taken at the
14 residence where Andres and William were kept
15 (indicating)? Do they fairly and accurately represent
16 how that place looked when you went to take the
17 photograph?

18 A. Yes.

19 MS. TISE: At this time I'm going to offer
20 101 through 103.

21 (State's Exhibit No. 101 through 103
22 Offered)

23 MR. CORNELIUS: No objection. I have seen
24 them.

25 THE COURT: State's 101 through 103 are

1 admitted without objection.

2 (STATE'S EXHIBIT NO. 101 THROUGH 103

3 **Admitted**)

4 Q. (By Ms. Tise) Now I'm going to show you State's
5 Exhibit 104 and ask if you recognize what that photo
6 depicts (indicating)?

7 A. Yes.

8 Q. What is it?

9 A. That's the vehicle that Obel abandoned with the
10 other subjects and it was taken by the police.

11 MS. TISE: Okay. At this time, I will
12 offer State's 104.

13 (STATE'S EXHIBIT NO. 104 OFFERED)

14 MR. CORNELIUS: No objection.

15 THE COURT: State's 104 is admitted without
16 objection.

17 (STATE'S EXHIBIT NO. 104 ADMITTED)

18 Q. (By Ms. Tise) Looking at State's Exhibit 101,
19 what are we looking at, sir (indicating)?

20 A. That is the living room area of the residence.
21 There is furniture and a table.

22 Q. Okay. And is this the living room area of the
23 house where William and Andres were kept?

24 A. Yes.

25 Q. I'm showing you State's Exhibit 102. What are

1 we looking at here (indicating)?

2 A. That's the bathroom area.

3 Q. Okay. And is there a bathtub here in this area
4 of the bathroom (indicating)?

5 A. Yes.

6 Q. And a little blue sink over here on the side
7 (indicating)?

8 A. Yes.

9 Q. And that's also in the residence where they
10 were being kept, correct?

11 A. Yes.

12 Q. I'm showing you State's Exhibit 103. What is
13 that (indicating)?

14 A. That is a sledge hammer and a cord, an
15 extension cord, orange color.

16 Q. And was that sledge hammer located in the house
17 where William and Andres had been held when they were
18 kidnapped?

19 A. Yes.

20 Q. And did you have an opportunity, after you
21 talked to William and Andres, to determine whether they
22 could identify that sledge hammer?

23 A. Yes.

24 Q. And were they able to?

25 A. Yes.

1 Q. Looking at State's Exhibit 104, what is this
2 (indicating)?

3 A. It's a Ford Taurus vehicle, four-door. That is
4 the vehicle that Obel and another subject abandoned.

5 Q. Okay. Agent DeJesus, how long did this ordeal
6 last from start to finish?

7 A. It started on October 11th of 2001. It was
8 reported around 11:00 p.m. and it lasted until October
9 12th or 13th, until midnight or the early hours of the
10 next day. And afterwards, some more days of
11 investigation.

12 Q. Okay. When were William and Andres released?

13 A. On October 12th at nighttime, close to midnight
14 or the early hours of the next day.

15 Q. Okay. After your investigation was complete on
16 this case, did you follow through into the trial -- and
17 I will rephrase that.

18 Did you follow it through the judicial
19 process?

20 A. Yes.

21 Q. Okay. And what happened in the judicial
22 process with this case?

23 A. The subjects were accused -- Obel was accused
24 for the cases of kidnapping against William Garay and
25 Andres Buten, the firearms act and the sharp instrument

1 act.

2 Q. Okay. So, they were charged with the
3 kidnapping and in addition a gun case and a knife case?

4 A. Yes, together with the kidnapping.

5 Q. Were you able to identify some other males who
6 helped him?

7 A. Yes.

8 Q. And one of those males, I think you mentioned
9 earlier was someone named Pablo?

10 A. Pablo Estevez.

11 Q. Okay. And were Pablo and the other males that
12 were involved in this kidnapping also charged?

13 A. Yes.

14 Q. And were all individuals, including Obel
15 Cruz-Garcia, convicted of this offense?

16 A. Yes.

17 Q. In fact, did Obel Cruz-Garcia plead guilty to
18 this offense?

19 A. Yes.

20 Q. And does that include the kidnapping, the gun
21 and the knife charges?

22 A. Yes.

23 Q. And what sentence did he receive?

24 A. Sixteen years.

25 MS. TISE: May I approach?

1 THE COURT: Yes.

2 Q. (By Ms. Tise) I'm going to show you what's been
3 marked as State's Exhibit 121 and ask you if you know
4 what that is (indicating)?

5 A. Yes.

6 Q. Is this actually a copy of the documents
7 reflecting the judgment and sentence of conviction of
8 Obel Cruz-Garcia in this case?

9 A. Yes.

10 Q. And it includes his fingerprints and a photo of
11 him, does it not?

12 A. Yes.

13 Q. And these original documents are certified, are
14 they not?

15 A. Yes.

16 Q. Okay. And they include the Spanish language
17 original documents?

18 A. Yes.

19 Q. Okay. And in addition, an English
20 interpretation of what is contained?

21 A. Yes.

22 MS. TISE: Your Honor, at this time, I'm
23 going to offer State's 121, a certified copy of a public
24 record. It also has been translated into English and
25 that translation has been certified and been on file

1 with the Court for the requisite number of days.

2 (State's Exhibit No. 121 Offered)

3 MR. CORNELIUS: Can I have just one moment
4 to make sure it's the same one I have?

5 THE COURT: Yes.

6 | (Pause)

7 MR. CORNELIUS: Yes, we have no objection,
8 Judge.

11 | You may proceed.

12 (State's Exhibit No. 121 Admitted)

13 Q. (By Ms. Tise) And is it fair to say, Agent
14 DeJesus, that you continued to follow the defendant as
15 his case has gone through the process?

16 A. Yes.

17 Q. And when he was in Puerto Rico, you followed
18 the case through parole hearings after he was in prison
19 there, correct?

20 A. No.

21 Q. Did you notify the other individuals about the
22 parole hearings as they were coming down? Do you know
23 if they were notified?

24 A. No.

25 Q. Okay. So, you don't know that they attended

1 parole hearings on this case?

2 A. I know because they told me so.

3 Q. Okay. In fact, they attended all of them,
4 right?

5 A. Yes.

6 MS. TISE: I will pass the witness.

7 THE COURT: Thank you, Ms. Tise.

8 Mr. Cornelius.

9 **CROSS-EXAMINATION**

10 **BY MR. CORNELIUS:**

11 Q. Agent DeJesus, my name is Skip Cornelius.

12 We've never met, have we?

13 A. No.

14 Q. I just have a few questions to ask you, sir.

15 How long was it from the time

16 Mr. Cruz-Garcia was arrested in his case till he pled
17 out on the case?

18 A. Close to -- maybe close to one year.

19 Q. Okay. During that year, was he in custody?

20 A. He was arrested, he was detained in a penal
21 institution.

22 Q. The entire time?

23 A. Yes, after he was charged.

24 Q. Okay. On the day that y'all arrested him, did
25 he ever get released after that day?

1 A. Yes.

2 Q. Why was that?

3 A. The investigation was not complete.

4 Q. And for how long was he released?

5 A. From the 13th until the 18th of October.

6 Q. Five days?

7 A. Yes.

8 Q. And during that time, did you have any contact
9 with the United States government, FBI, INS, DEA,
10 anybody from those agencies?

11 MS. TISE: I object to the relevance of
12 that.

13 THE COURT: Please approach.

14 (At the bench, on the record)

15 MR. CORNELIUS: The defendant has
16 instructed me to ask these questions.

17 MS. TISE: I will object to them.

18 THE COURT: Does it have to do with the
19 fact that -- I can see some relevance, but not getting
20 into anything that he is not supposed to get into.

21 MR. CORNELIUS: Okay. It will take about a
22 minute or two for me to explain this to you. And I need
23 to be able to speak freely.

24 THE COURT: You want the jury out?

25 MR. CORNELIUS: Yes.

1 (Open court, defendant and jury present)

2 THE COURT: We'll take the jury out for
3 five minutes.

4 (Open court, defendant present, no jury)

5 THE COURT: Back on the record.

6 Go ahead, Mr. Cornelius. What's the
7 relevance?

8 MR. CORNELIUS: The defendant would like
9 for me to ask this witness if this witness verified that
10 the defendant was a corroborating witness with either
11 the FBI or DEA or INS. That's the reason for this.

12 MS. TISE: Well, I know why the agent has
13 told me he was released. He was released because under
14 their law they can't arrest someone after a confession.
15 They have to do a complete investigation on the case and
16 present it to the D.A. And that's why he told me they
17 released him. They can't just get -- they have to go
18 through what we would call in-take. So, they've got to
19 let him go and finish up what they are going to do and
20 make a full presentation to ask that charges be
21 accepted.

22 THE COURT: You can ask those questions
23 now --

24 MR. CORNELIUS: Outside the presence?

25 THE COURT: -- because it doesn't sound

1 like -- I'm not going to let that in. I mean, if he
2 doesn't know anything about it -- just ask him the
3 questions so --

4 MR. CORNELIUS: Sure.

5 MS. TISE: I will tell you this, just to be
6 complete. He does say that at some point while talking
7 to the defendant the defendant was telling him that he
8 was some kind of, you know, important person with the
9 DEA.

10 THE COURT: We have no confirmation about
11 that.

12 MS. TISE: He was not able to confirm any
13 of that.

14 MR. CORNELIUS: Can I just get him to say
15 so that the record is complete?

16 THE COURT: You may proceed, Mr. Cornelius.

17 **VOIR DIRE EXAMINATION**

18 **BY MR. CORNELIUS:**

19 Q. Agent DeJesus, I know you just -- hopefully you
20 just heard what we all talked about, correct?

21 A. Yes, but I don't understand.

22 Q. Okay. Did you have a conversation with my
23 client after he was in custody wherein he informed you
24 that he was some sort of informant for either the FBI,
25 the DEA, or INS?

1 A. Yes.

2 Q. And did you attempt to confirm whether that was
3 true or not?

4 A. Yes.

5 Q. Were you able to confirm that it was true?

6 A. The agents said that he cooperated with the
7 agency, but it was never confirmed in writing.

8 Q. So, it was confirmed, but you didn't get
9 anything in writing?

10 A. Yes.

11 MR. CORNELIUS: Okay. Well, that's what we
12 would attempt to go into, Judge. Well, let me ask one
13 other question.

14 Q. (By Mr. Cornelius) Was the defendant claiming
15 that he was acting in this capacity when these events
16 occurred for which he got convicted in Puerto Rico?

17 A. Yes.

18 Q. But that was never confirmed to you; is that
19 what you're saying?

20 A. No.

21 Q. Not orally or in writing, or was it confirmed
22 orally but not writing?

23 A. Orally that he had cooperated with them, but
24 not in writing.

25 Q. Okay. Let me see if I can be certain on this.

1 Orally that he had cooperated -- strike that. Orally
2 that -- somebody from the United States government
3 confirmed that he was cooperating with them during the
4 course of these events for which he was arrested and got
5 convicted or just that he cooperated with them in the
6 past?

7 A. That he had cooperated previously.

8 Q. But no one told you he was cooperating in this
9 particular case?

10 A. No.

11 MR. CORNELIUS: Well, that's the part I
12 want to go into, Judge.

13 THE COURT: Okay. What says the State
14 regarding that?

15 MS. TISE: It's not relevant. First of
16 all, it would be hearsay what the agent told him over
17 the phone. I wasn't aware that he had even gotten oral
18 confirmation based on my conversation, but I would say
19 that would still be hearsay, what the agent told him.
20 And, second of all, it has nothing to do with this case.
21 It didn't impact at all any of the investigation. It's
22 not relevant and it's not something this witness has
23 firsthand knowledge of.

24 THE COURT: Do you find it mitigating in
25 any way? We're here for punishment. Is that mitigation

1 punishment -- is that mitigation evidence?

2 MS. TISE: I don't think so, but even if it
3 were, Judge, mitigation still has to go through the
4 regular rules of evidence. It can't be presented by
5 this officer because he doesn't know the details of the
6 cooperation or what it had to do with or anything about
7 it. It's hearsay.

8 THE COURT: Okay. So, the objection is
9 hearsay, not relevance. Is that correct?

10 MS. TISE: I would certainly say it's
11 hearsay.

12 THE COURT: Okay. My ruling is that it may
13 be relevant to mitigation in some form or fashion in
14 this case. However, through this witness, it is hearsay
15 because all he has is that he spoke with some person and
16 found that he may have cooperated in some way, but not
17 in regards to the kidnapping that he was working on.
18 So, at this point, I'm going to sustain the State's
19 objection as to hearsay. If, however, you can come up
20 with a witness that can say he cooperated in some way
21 over the course of his time in Puerto Rico, that may be
22 admissible. I'm not going to prevent you from
23 presenting that if you are able to. All right?

24 MR. CORNELIUS: Yes, ma'am. Can I ask him
25 one more question since we've got the jury out?

1 THE COURT: Yes.

2 MR. CORNELIUS: I forgot the question. One
3 second.

4 | (Pause)

5 Q. (By Mr. Cornelius) Well, but the reason you
6 released him after y'all arrested him that night had
7 nothing to do with this conversation with the federal --
8 United States federal authority, did it?

9 A. No.

10 Q. It had nothing to do with that?

11 A. No.

12 MR. CORNELIUS: Okay. I think that's
13 clear. Thank you.

14 THE COURT: I think it's clear.

15 All right. Ready to bring the jury back
16 in?

17 MR. CORNELIUS: Yes, Your Honor.

18 (Open court, defendant and jury present)

19 THE COURT: Please be seated.

20 You may proceed, Mr. Cornelius.

21 MR. CORNELIUS: Thank you, Judge.

CROSS-EXAMINATION

23 | CONT'D BY MR. CORNELIUS:

24 Q. Agent DeJesus, I'm confused on the length of
25 time that the kidnapping took. Are you saying -- forget

1 about the date for a second, but are you saying at
2 11:00 p.m. on day one to midnight on day two?

3 A. Approximately, yes.

4 Q. Okay. All right. So, one day?

5 A. I would say one day and a half.

6 Q. Twenty-five hours. 11:00 p.m. to 12:00

7 midnight, would that be 25 hours?

8 A. Well, it was reported to the police at 11:00
9 p.m., but the kidnapping process began a little earlier.

10 Q. Before 11:00. The kidnapping itself occurred
11 before 11:00 p.m.?

12 A. Yes.

13 Q. Okay. But on that same day?

14 A. Yes.

15 Q. Okay. Did it cause you some concern when you
16 learned that the kidnappers' demands were \$75,000 in
17 cash and 150 kilos of coke?

18 A. Yes.

19 Q. And then I think you testified that there was
20 an agreement reached for fifty \$1,000 in cash and 100
21 kilos of coke. I know that you were just telling him to
22 agree to that, but the kidnappers' demands -- their
23 agreement was fifty \$1,000 in cash and 100 kilos of
24 coke, correct?

25 A. Well, no, they began asking for much more, but

1 that was the agreement that we reached.

2 Q. That's still a lot, though, is it not?

3 A. Yes.

4 Q. I mean, for a guy that has a small restaurant
5 that is really an extension of a truck, that's a lot for
6 somebody to ask for, wouldn't you think?

7 A. Yes, but I investigated -- I investigated them
8 and none of them deals with drugs.

9 Q. I understand that, but that was kind of unusual
10 for somebody to ask a person that has a little small
11 restaurant for that kind of money and cocaine. Would
12 you agree with me that that was very unusual?

13 A. Yes. But in Puerto Rico normally on the
14 kidnapping cases, kidnappers ask for big amounts of cash
15 and drugs.

16 Q. Is it your training and experience that they
17 just ask that from anybody off the street or people that
18 they think might have that stuff?

19 A. Yes.

20 Q. And that's why you investigated it further, to
21 see if maybe these people were involved in drugs,
22 correct?

23 A. Yes.

24 Q. And it turned out they were not?

25 A. No.

1 MR. CORNELIUS: Could I have a moment,
2 Judge?

3 THE COURT: Yes.

4 (Pause)

5 MR. CORNELIUS: Okay. We'll pass the
6 witness, Judge.

7 THE COURT: Thank you, Mr. Cornelius.

8 Anything further from this witness?

9 MS. TISE: Nothing further.

10 THE COURT: May this witness be excused?

11 MS. TISE: Yes, Your Honor.

12 THE COURT: You may step down, Agent.

13 Thank you.

14 Please call your next.

15 MS. TISE: I will call Andres Castillo
16 Buten.

17 THE BAILIFF: Your Honor, the witness has
18 been sworn.

19 THE COURT: Sir, please keep your voice up
20 and speak into the microphone.

21 You may proceed, Ms. Tise.

22 **ANDRES CASTILLO BUTEN,**

23 having been first duly sworn, testified through the
24 interpreter as follows:

25 **DIRECT EXAMINATION**

1 BY MS. TISE:

2 Q. Sir, would you please introduced yourself to
3 the jury?

4 A. Yes.

5 Q. Can you tell them what your name is?

6 A. Andres Castillo.

7 Q. Okay. And is your maternal surname Buten?

8 A. Buten.

9 Q. And how are you related to Manuel Buten?

10 A. Brother.

11 Q. Okay. How old are you?

12 A. Thirty-nine.

13 Q. And what does your family call you?

14 A. They call me Johnny.

15 Q. Okay. What do you do for a living now?

16 A. I also have a small food truck of mofango.

17 Q. Okay. So, you have a truck like Manuel does?

18 A. Yes.

19 Q. And you also sell mofango?

20 A. Yes.

21 Q. Okay. How long have you had that business?

22 A. Since I arrived in Puerto Rico about 13 years.
23 I've always worked in that.

24 Q. Okay. But how long have you had a food truck
25 of your own?

1 A. About eight years.

2 Q. Okay. Are you married or single?

3 A. I live with someone.

4 Q. Okay. And do you have children with her?

5 A. Yes.

6 Q. How many children do y'all have?

7 A. I have two with her.

8 Q. Okay. And I want to take you back to

9 October 11th of 2001. Do you remember that day?

10 A. Yes.

11 Q. At that point in time, where were you working?

12 A. With Manuel.

13 Q. Okay. And what did you do for Manuel?

14 A. I worked as a waiter. I waited on the people.

15 Q. Okay. I want to ask you about something that
16 happened that day that we called you here to testify
17 about.

18 A. Yes.

19 Q. Tell us what first happened that started this
20 incident that ended up with you being kidnapped.

21 A. Well, that night I was working there at the
22 little food truck and a guy and a gal got there.

23 Q. Okay.

24 A. And they asked for some food.

25 MR. CORNELIUS: I'd ask for question and

1 answer, Judge.

2 A. There was --

3 THE COURT: Please answer only the question
4 that's asked.

5 THE WITNESS: Okay.

6 Q. (By Ms. Tise) So, a guy and a girl came up and
7 asked for some food.

8 A. Uh-huh.

9 Q. I want you to look around the courtroom and I
10 want you to tell me if you see the person -- the guy who
11 came up with the woman to ask for food on October 11th
12 of 2001.

13 A. Yes.

14 Q. Can you point him out for us, please?

15 A. Yes.

16 Q. Can you point him out for the jury, please?

17 A. Now?

18 Q. Yes, please.

19 A. It's that man (indicating).

20 Q. And can you describe for us the clothes that
21 he's wearing?

22 A. He has on a gray jacket and a blue shirt.

23 MS. TISE: Your Honor, may the record
24 reflect the witness has identified the defendant?

25 THE COURT: The record will so reflect.

1 Q. (By Ms. Tise) Had you ever seen that man before
2 that night?

3 A. No, I hadn't.

4 Q. Had you ever seen the woman that he was with?

5 A. No, not that either.

6 Q. Okay. Can you tell us what happened after the
7 man and the woman came up and ordered food?

8 A. They ordered their food, it was served, and
9 then I took it to them.

10 Q. Okay. Then what happened?

11 A. They ate. And then after they ate, they got
12 up -- he got up with a weapon.

13 Q. Okay. What kind of weapon?

14 A. He had a revolver.

15 Q. What happened next?

16 A. He pointed to my brother that was up at the
17 top, the cook.

18 Q. Where were you when that happened?

19 A. I was there, down there.

20 Q. By the tables?

21 A. Right there by the salon.

22 Q. Okay. Were you down in the table area where he
23 had been eating?

24 A. Exactly, exactly. Yes.

25 Q. Okay. And after he pulled out the gun, do you

1 remember him saying anything?

2 A. Yes. He pointed at my brother and he fired at
3 him.

4 Q. Did he say anything before he did that?

5 A. No, no. I don't remember very well if he did
6 say something.

7 Q. Okay. What happened next?

8 A. He fired at him, my brother threw himself to
9 the ground, and he took off running.

10 Q. Okay. Did he get away?

11 A. Yes. He went out the door of the food truck.

12 Q. Okay. What happened after your brother ran?

13 A. Well, when he took off, Willy was there and
14 they got me and Willy since he took off.

15 Q. Okay. What did the man, Obel Cruz-Garcia, that
16 you pointed out earlier do?

17 A. He was the one that took us.

18 Q. Okay. Did he have anyone helping him at the
19 restaurant?

20 A. Yes. There were other people seated at a
21 table.

22 Q. Okay.

23 A. But apparently they were with him because when
24 he got up with a weapon, they also got up. There were
25 three -- about two or three more that also had weapons.

1 Q. Okay. And how did they get you? Tell us
2 exactly what they did.

3 A. They grabbed us right there and immediately
4 they put hoods over us, they put bags and they put us
5 into a truck.

6 Q. Okay. How many people, do you remember, helped
7 him do that?

8 A. One grabbed me, another one grabbed Willy, and
9 they put us into the truck -- and they put us in the
10 truck. More or less, there were about three to four.

11 Q. Okay. Which one did Obel Cruz-Garcia grab?

12 A. I can't tell you very well because they put a
13 hood over us.

14 Q. Okay. Then what happened?

15 A. And from there, they took us to a house.

16 Q. Okay. Where did they put you in the car? Do
17 you remember how you and Willy were seated?

18 A. In the back.

19 Q. Okay. Was there anyone in the back with you
20 and Willy?

21 A. Yes. There was a guy at one door and there was
22 a guy at the other door. We were in the middle.

23 Q. Okay. And do you know who was driving the
24 vehicle?

25 A. No, I do not know because we had a hood over

1 us.

2 Q. Do you know where they took you?

3 A. We did not know.

4 Q. During the drive, do you remember them saying
5 anything?

6 A. No.

7 Q. What's the next thing that you remember?

8 A. Well, they took us to the house. They took us
9 to a house and apparently they left Willy at one place
10 and then that man pushed me into the bathroom.

11 Q. Okay. So, you remember getting to a house?

12 A. Yes.

13 Q. And was the hood still on you?

14 A. I still had the hood on. When we arrived
15 there, they opened door.

16 Q. To the car or the house?

17 A. They opened the door to the truck and they
18 threw us.

19 Q. Okay. And who threw you?

20 A. Him.

21 Q. And when you say "him," are you referring to
22 the defendant, Obel Cruz-Garcia?

23 A. Yes.

24 Q. And I noticed you are having some difficulty
25 looking at him. Is that something that makes you

1 uncomfortable?

2 A. Yes, but it doesn't matter.

3 Q. Okay. So, Obel Cruz-Garcia threw you to the
4 ground?

5 A. Yes.

6 Q. And then what happened?

7 A. He hit me, he hit me, he kept throwing blows to
8 my face, he kicked me.

9 Q. And when you say "he," are you referring to
10 Obel Cruz-Garcia?

11 A. Yes.

12 Q. Then what happened?

13 A. I fell into the bathtub in the bathroom. And
14 then with the shower rod, where the curtain rod -- where
15 the curtain goes, the shower curtain goes.

16 Q. What did he do with that rod?

17 A. He hit me on my head, many times he hit me on
18 my head, and then he urinated on me. He urinated on me
19 here and he continued hitting me. And then he got a
20 mallet and he hit me on my foot.

21 Q. And I want to take you through those things a
22 little slower. First of all, tell the jury when the
23 hood came off.

24 A. When I entered the house, they removed the
25 hood.

1 Q. And you say "they." Who are you talking about?

2 A. There were several of them.

3 Q. Okay. And do you remember which one took your
4 hood off?

5 A. Him.

6 Q. And you mentioned that before you came into the
7 house someone threw you out of the truck and was hitting
8 you?

9 A. When they took us into the house, he took me
10 into the bathroom.

11 Q. Okay. When you were outside and someone threw
12 you out of the truck and hit you and beat you, how do
13 you know that person was Obel Cruz-Garcia?

14 A. Because he removed the hood from me and told me
15 that I could see his face because it didn't matter.

16 Q. Okay. So, at that point he had removed your
17 hood?

18 A. Yes.

19 Q. And, in fact, when he did that, he told you why
20 it didn't matter, didn't he?

21 A. Yes. Because he said that anyway I was going
22 to die, that he was going kill me.

23 Q. And did you believe that?

24 A. Well, I had to believe it because I was at his
25 mercy.

1 Q. And is that when he beat you?

2 A. Yes, that was when he was beating me.

3 Q. And that's how you know it was him specifically
4 who was doing that?

5 A. Yes, he was doing it.

6 Q. At any point were you bound in any way?

7 A. Yes. Yes, I was tied up.

8 Q. And can you tell us what you were tied up with?

9 A. With a hanger wire.

10 Q. The wire from a coat hanger?

11 A. Yes, of a hanger.

12 Q. When did that happen?

13 A. That same night.

14 Q. Okay. But before you were taken in the house
15 or after you were taken in the house?

16 A. When I was taken into the bathroom, that's when
17 he tied me up with the wire from the hanger.

18 Q. And you mentioned something about the bathtub.

19 A. Yes.

20 Q. How did you wind up in the bathtub?

21 A. Because he threw me. When he threw me.

22 Q. Okay. He threw you into the bathtub?

23 A. Into the bathtub.

24 Q. When you say "he," at that particular point in
25 time are you talking about Obel Cruz-Garcia?

1 A. Yes.

2 Q. Were you hurt when you fell in the bathtub?

3 A. Yes. I hit myself.

4 Q. Were your hands tied behind or in front of you?

5 A. Behind me.

6 Q. After you were in the bathtub, what did he do,
7 Obel Cruz-Garcia?

8 A. That's where he beat me, when he threw me into
9 the tub.

10 Q. And now we're talking about another beating
11 besides the one that happened outside, correct?

12 A. Okay. Yes. And then he removed one of my
13 tennis shoes and he hit me with a mallet on my toes.

14 Q. Okay. You mentioned that before that happened
15 he removed the shower curtain rod?

16 A. He had a shower curtain rod where the curtain
17 was hanging.

18 Q. And shower curtain rods come in all types of
19 materials. Was this one a heavy rod?

20 A. It was strong. Because when he urinated on me,
21 my head was burning.

22 Q. So, when he beat you with the rod, you had open
23 wounds on your head?

24 A. They weren't open wounds.

25 Q. Were they bleeding?

1 A. No.

2 Q. Then what happened?

3 A. He left -- after he hit me on my foot with a
4 mallet, he left and then he came back in with a woman.
5 And then he started having sex with her right there in
6 front of me.

7 Q. In the bathroom?

8 A. In the bathroom.

9 Q. Was this the same woman that had been at the
10 restaurant with earlier?

11 A. Yes, the one that he was with.

12 Q. And when you're saying "he" during this part,
13 are you talking specifically about Obel Cruz-Garcia?

14 A. Yes.

15 Q. What did he do when he was having sex with the
16 woman?

17 A. He stuck his fingers in the woman's private
18 part and then he put it in my mouth.

19 Q. And did he say anything to you at that point?

20 A. He said: Do you like it, do you like it?

21 Q. What happened next?

22 A. He said: Do you like my woman? He would put
23 his fingers in my mouth and then he would hit me.

24 Q. Where would he hit you?

25 A. On my face.

1 Q. What happened next?

2 A. They left and then after that later they
3 brought Willy in.

4 Q. Okay. And you're saying "they." Was someone
5 else with him before they brought Willy in?

6 A. Him and the woman, when him and the woman came
7 in.

8 Q. Okay. So, they left?

9 A. They left. They left the bathroom.

10 MS. TISE: May I approach?

11 THE COURT: Yes.

12 Q. (By Ms. Tise) I'm going to show you State's
13 Exhibit 102 and ask you if that's the bathroom where you
14 were held (indicating)?

15 A. Yes.

16 Q. And I'm going to show you State's Exhibit 103
17 and ask you if you recognize anything in that picture
18 (indicating).

19 A. Yes. He hit me with that mallet.

20 Q. And can you stand up just briefly and
21 demonstrate for the jury how he hit your toe with that
22 mallet?

23 A. Where do I do that?

24 Q. Just show it to the jury as if you had a mallet
25 in your hands. How far did he hit you?

1 THE COURT: You may step down, if you need
2 to, sir.

3 A. With a mallet he removed this tennis shoe and
4 he hit me here (indicating).

5 Q. (By Ms. Tise) Did he hit you hard?

6 A. Hard. I screamed a lot.

7 Q. And did you scream a lot when he was hitting
8 you all those other times?

9 A. Yes.

10 Q. You said at that point they brought Willy into
11 the bathroom with you?

12 A. After he and the girl exited the bathroom.

13 Q. And were you still tied up that point?

14 A. Yes, I was still tied up.

15 Q. When they brought Willy in, did you notice
16 anything about him?

17 A. Willy had also been beaten up.

18 Q. What happened next?

19 A. We were left there, morning came, and we were
20 there for about two days.

21 Q. And when Willy came in, did he come in
22 immediately after Obel Cruz-Garcia and the woman left or
23 had some time passed?

24 A. No, no. When he left, it was about 15 to 20
25 minutes when Willy came in.

1 Q. Okay. And he had been beaten up?

2 A. Yes, he was also beaten.

3 Q. Were y'all scared?

4 A. We were scared. We thought we were going to
5 die.

6 Q. At some point during the time you were held, do
7 you remember having a phone call with Manuel?

8 A. I don't remember very well because...

9 Q. Do you remember if you were ever put on the
10 phone to talk to Manuel or do you not remember that?

11 A. I don't remember very well if I was able to
12 talk to him or not. I don't remember.

13 Q. Okay. Do you remember what happened after they
14 put Willy in the room with you?

15 A. After that, we were not beaten again.

16 Q. At some point did you learn the defendant had
17 left y'all with someone else to stay with you?

18 A. Yes. He left a guy at the door.

19 Q. Okay. And that guy, do you remember what he
20 was being called, what his name was?

21 A. I believe that it was Pablo.

22 Q. And Pablo didn't beat you?

23 A. No, Pablo didn't hit us.

24 Q. Is it fair to say the only person who beat you
25 was Obel Cruz-Garcia?

1 A. Yes.

2 Q. During the time that you were being held, did
3 you have an opinion on who was running this whole deal?

4 A. From what I saw, he was the one that was in
5 charge because he was the one that was acting it all out
6 and doing everything.

7 Q. And when you say "he," do you mean Obel
8 Cruz-Garcia?

9 A. Yes.

10 Q. Was he the one who was telling everyone else
11 what to do?

12 A. What they had to do.

13 Q. And were they doing everything that he said?

14 A. Yes. Because he told Pablo if we moved to kill
15 us.

16 Q. Okay. During the time that he held you, did he
17 tell you that on multiple occasions?

18 A. To Pablo, to the guy that was at the door.

19 Q. Okay. And you believed he would, didn't you?

20 A. Yes.

21 Q. Did you ever think you were going to get out of
22 this situation alive?

23 A. I never thought it.

24 Q. Tell us how it happened that y'all were
25 ultimately released.

1 A. I don't know what happened. I just know that
2 the guy that was at the door told us to get ready, y'all
3 are leaving. And they also took us out with a hood over
4 our heads. They put us in a car and they took us about
5 two or three blocks from where we were at and there they
6 let us go.

7 Q. And how many people did that?

8 A. There were two, I believe, that there were.
9 About two.

10 Q. Okay. Did you have anyplace to go when they
11 dropped you off?

12 A. Well, no. We ran to the avenue and then there
13 at the avenue we already knew where were at. We started
14 walking until we found a patrol car.

15 Q. Can you tell us about the injuries you had?

16 A. Well, I couldn't wear a shoe for about a month.

17 Q. Okay. Why?

18 A. Because my foot and toe were swollen.

19 Q. Okay.

20 A. And I lost two of my top teeth.

21 Q. And when did that happen?

22 A. When he was beating me in the bathroom.

23 Q. He knocked your teeth out?

24 A. Yes.

25 Q. Do you still have problems with your foot?

1 A. I have problems at times to walk.

2 Q. After they released you, you said you found a
3 police car?

4 A. Yes.

5 Q. Where did the police car take you?

6 A. We asked to be taken to the place where we
7 work. After we got there, they made a call on the radio
8 and more patrol cars arrived and then we were taken to
9 the central police station.

10 Q. At some point, were you asked to identify some
11 of the individuals that were involved in this?

12 A. Yes.

13 Q. And was one of those individuals Obel
14 Cruz-Garcia?

15 A. Yes.

16 Q. And you were able to identify him for the
17 police?

18 A. Yes.

19 Q. And, ultimately, he was convicted of that case,
20 was he not?

21 A. Yes.

22 Q. Over the years, have you received notice from
23 people about parole hearings that have come up when he
24 was in prison in Puerto Rico?

25 A. Yes. We have gone. We have gone.

1 Q. Have you gone to all of his parole hearings?

2 A. I think so.

3 Q. And Manuel has gone, has he not?

4 A. Yes, he also gone.

5 Q. William has also gone?

6 A. Yes.

7 Q. Why is that?

8 A. Well, we were called in to go and we didn't
9 want to let him go because he had abused us a lot.

10 Q. And have you still had problems because of what
11 happened to you that day?

12 A. Well, one gets nervous at times and you think
13 that it can happen to you again.

14 Q. And is it fair to say that you still fear for
15 your safety?

16 A. Yes.

17 Q. Even now testifying in this case?

18 A. Even now.

19 MS. TISE: I will pass the witness.

20 THE COURT: Thank you, Ms. Tise.

21 Mr. Cornelius.

22 MR. CORNELIUS: Can I have a moment, Judge?

23 THE COURT: Yes.

24 (Pause)

25 MR. CORNELIUS: We're going to reserve any

1 cross, Judge.

2 THE COURT: Okay. May this witness be
3 excused at this time?

4 MS. TISE: Yes, Your Honor.

5 THE COURT: Okay. Mr. Buten, you may step
6 down. You're excused subject to recall.

7 Please call your next.

8 MS. TISE: The State will call William
9 Garay Martinez.

10 THE COURT: Mr. Martinez, please speak into
11 the microphone and keep your voice up, please, sir.

12 Ms. Tise, you may proceed.

13 **WILLIAM GARAY MARTINEZ,**

14 having been first duly sworn, testified through the
15 interpreter as follows:

16 **DIRECT EXAMINATION**

17 **BY MS. TISE:**

18 Q. Would you please introduce yourself to the
19 jury?

20 A. William Garay Martinez.

21 Q. And what does your family call you?

22 A. Willy.

23 Q. Willy.

24 Okay. Do you know a person named Manuel
25 Buten?

1 A. Yes.

2 Q. And how are you related to him?

3 A. Now, we are friends.

4 Q. Okay.

5 A. Before he was my stepfather.

6 Q. And he and your mother are no longer together,
7 correct?

8 A. No.

9 Q. Okay. So, how long have you known Manuel?

10 A. Since I was eight years old.

11 Q. And can you tell the jury how old you are now?

12 A. Twenty-eight.

13 Q. And can you tell the jury how old you were in
14 2001 when the incident that we're here to talk about
15 happened?

16 A. Sixteen.

17 Q. Okay. What do you do for a living these days?

18 A. Cook.

19 Q. Okay. And are you married or single?

20 A. Single.

21 Q. Okay. Do you have any children?

22 A. Yes.

23 Q. How many?

24 A. Three.

25 Q. Okay. Back in 2001, do you remember working

1 and helping out at your stepfather's food trailer?

2 A. Yes.

3 Q. And what did you do for him back then?

4 A. I was also a cook and I would also clean the
5 seafood and I would peel the plantain.

6 Q. Okay. So, you cooked, you cleaned the seafood,
7 and peeled the plantain?

8 A. I worked there.

9 Q. Okay. And so, can we try to wait and let the
10 interpreter finish her question before you answer?

11 A. Yes.

12 Q. She's good, but not that good.

13 Okay. So, most of the time when you were
14 working, is it fair to say you were in the trailer
15 itself with your stepfather?

16 A. Inside, outside. Wherever I was told.

17 Q. Wherever he told you to go, you did it?

18 A. Uh-huh.

19 Q. Okay. Back in October of 2001 when this
20 happened, when the man that we're here to talk about
21 first approached your food trailer, where were you
22 working?

23 A. Up in the kitchen.

24 Q. Okay. So, inside the trailer where your
25 stepfather was?

1 A. Yes, inside.

2 Q. Okay. And who else was working that day?

3 A. Andres.

4 Q. Okay. And do you also call him Johnny?

5 A. Yes.

6 Q. And was Manuel there that day?

7 A. Yes.

8 Q. Do you remember Johnny's wife being around at
9 that time?

10 A. I don't remember very well.

11 Q. Okay. So, while you are up there and cooking
12 inside the trailer, when did the person we're here to
13 talk about first come to your attention?

14 A. Well, Obel went and ordered food. He asked for
15 some plantain with octopus and shrimp, along with the
16 girl. And during the time that they were cooking his
17 food, there was some music on. He said: That's very
18 nice music, and he asked that it be turned up. He told
19 Andres to turn up the volume. And he did it at that
20 moment, Andres turned up the volume.

21 Q. Okay. And did you hear that exchange take
22 place?

23 A. Yes.

24 Q. And this is while you were cooking?

25 A. Yes, I was working.

1 Q. And where was Manuel?

2 A. In the kitchen.

3 Q. Okay. And was he part of that conversation or
4 do you remember?

5 A. No, no. He didn't say anything.

6 Q. Okay. Then what happened?

7 A. He ate his food. And then after he ate his
8 food, he got up and went to the counter and he pulled
9 out a revolver and he fired two shots at Manuel.

10 Q. Okay.

11 A. But the shots didn't go out, nothing came out.
12 Manuel gets out, takes off running. And then he's like
13 this, still pointing at Manuel (indicating). Manuel
14 keeps running. And then he said: Get those two that
15 are up there. And if they have a weapon -- he had a
16 weapon.

17 Q. Okay. He said: Get those two, and he had a
18 weapon?

19 A. Yes.

20 Q. Okay. When you say "he" about the person who
21 is talking, do you see that person in the courtroom
22 today?

23 A. Uh-huh. He is right there (indicating).

24 Q. And can you tell us something about the
25 clothing that he's wearing?

1 A. He's got on a suit.

2 Q. Okay. What color is it, can you tell?

3 A. Dark gray.

4 MS. TISE: Your Honor, may the record
5 reflect the witness has identified the defendant?

6 THE COURT: The record will so reflect.

7 Q. (By Ms. Tise) Had you ever seen that man before
8 that day?

9 A. I could not recall it, but as he was hitting
10 me, he said to me: Don't you remember me? You don't
11 remember me, that I bought that cup of octopus from you
12 yesterday?

13 Q. So, had you remembered him or seen him before
14 as a customer?

15 A. The day before.

16 Q. And so now does -- after he said that, did that
17 come back to you?

18 A. Yes.

19 Q. Okay. Other than him coming up the day before
20 and buying some octopus from you, had you ever seen him
21 before?

22 A. No.

23 Q. Okay. He's not somebody that you knew or
24 associated with in any way?

25 A. No.

1 Q. What about the woman who was with him, had you
2 ever seen her before?

3 A. No.

4 Q. Is he the person who said to grab you and
5 your -- well, I guess he's your step uncle, Andres.

6 A. Me and Andres.

7 Q. Okay. But who is the one who gave the order to
8 grab y'all?

9 A. Obel.

10 Q. Okay. And were you grabbed?

11 A. Yes.

12 Q. Who did that?

13 A. Another person that was there.

14 Q. Okay. And did somebody also grab Andres?

15 A. Yes.

16 Q. Okay. Do you know who that was?

17 A. At that moment, I didn't see the face of the
18 person that grabbed me.

19 Q. Okay. What happened next?

20 A. After that, after he said that, they took us to
21 a truck and they put a pillowcase over each of us.

22 Q. Okay.

23 A. And they put us inside. One got in on one side
24 and another got in on the other side.

25 Q. And with the pillowcase on your head, I guess

1 you wouldn't have been able to see who those people
2 were?

3 A. No. It was dark. You couldn't see anything.

4 Q. And were you able to even say who was driving
5 at that point?

6 A. No, I did not know.

7 Q. Do you remember any conversation that was
8 happening when y'all were in that car?

9 A. He just said: Check them, and if any of them
10 have a weapon kill them.

11 Q. Okay. Did you have a weapon?

12 A. No.

13 Q. Did Andres have a weapon?

14 A. He also didn't have one.

15 Q. What happened next?

16 A. From there, we were taken to the house. They
17 put the truck in the garage, he opens the door. And
18 from the moment the door was opened, he started beating
19 us.

20 Q. Okay.

21 A. He removes the bag from my head and says as I'm
22 being beat I think. He removes the bag and says: You
23 don't remember me, son-of-a-bitch? I'm the one that
24 bought the cup of octopus from you. And then he grabs
25 and bites this lip and he spits on me. He throws me to

1 the floor and he continues hitting me and then he was
2 stomping on my back like this (indicating).

3 Q. Okay. I want to take it a little bit slower.

4 You're saying "he." Is the person --

5 A. Him (indicating).

6 Q. Is that the person who did all of those things
7 to you that you've just described?

8 A. Uh-huh.

9 Q. I see you pointing at the defendant, Obel
10 Cruz-Garcia.

11 A. Yes.

12 Q. Okay. What happened next?

13 A. I was laying there for a moment on the floor
14 and then he left for a moment. And while I was there, I
15 could hear Andres' screams. And every time he would
16 pass by, he would stomp on my back.

17 Q. And I want to stop you there.

18 A. Me?

19 Q. Yes. Stop for just a second. You described --
20 you described that he was stomping on your back.

21 A. Yes.

22 Q. And how was he --

23 A. Every time he would pass by, he would stop and
24 he would stomp.

25 Q. And did he use both feet when he did that or

1 one foot?

2 A. Both.

3 Q. So, was he jumping on your back with both feet
4 like that?

5 A. Yes, like that.

6 Q. Was it hard?

7 A. Uh-huh.

8 Q. Did it hurt?

9 A. Yes, it hurt.

10 Q. What were you doing?

11 A. From the beating, I was already like
12 anesthetized.

13 Q. Because before he did that, he had already
14 beaten you up pretty bad, hadn't he?

15 A. Yes, he had beaten me.

16 Q. And you said while this was going on, you could
17 hear something?

18 A. When he left me alone for a moment, when he
19 left me there, there was another man there.

20 Q. Okay. So, he left you --

21 A. And I believe that I could hear Johnny's
22 screams, Andres.

23 Q. And that was during the moment that he was away
24 from you, Obel Cruz-Garcia?

25 A. That he was not with me.

1 Q. And then from the way you are describing it, it
2 sounds like he would leave for a little while and then
3 come back and stomp on you some more and then leave
4 again and then come back?

5 A. Yes.

6 Q. While he was gone, did the man that he left you
7 with, did he do anything to you?

8 A. No.

9 Q. Did anybody else beat you or hurt you or abuse
10 you in any way while you were held other than Obel
11 Cruz-Garcia?

12 A. No, no.

13 Q. Did you ever hear him call anyone by name?

14 A. No.

15 Q. Okay. Did you notice how he interacted with
16 the other men who were helping him?

17 A. No.

18 Q. Were you able to form an opinion as to who was
19 the boss?

20 A. Well, he was the one that was giving the
21 orders.

22 Q. And was everybody else just doing what he said?

23 A. What he would say.

24 Q. What happened after he was stomping on you and
25 then he would leave and go to Andres and then come back?

1 What was the next thing that happened?

2 A. After a while he came back and he stood me up
3 and he beat me again. He hit me with a revolver here
4 (indicating). And then he was going to slit my throat.
5 He grabbed the knife and then he gave me several blows
6 with that knife and then he threw the knife. And then
7 he pulled out my penis and that he was going to cut it.
8 And what he did was just like kind of tap me with the
9 knife. And then he said no, that he was going to cut
10 one of my toes. And then he removed my tennis shoes, he
11 grabbed my toe, but he didn't cut it. And then after
12 those blows, he took me into the bathroom with Andres.

13 Q. So, let me ask you a couple of things about
14 that.

15 A. Uh-huh.

16 Q. When he put the knife up to you, up to your
17 neck and told you he was going to slit your throat --

18 A. Uh-huh.

19 Q. -- did he cut you?

20 A. Just a small mark.

21 Q. But he did cut you?

22 A. It was not something significant, just a little
23 scab.

24 Q. Okay. But a little cut with a knife?

25 A. Yes.

1 Q. And when he took your penis out --

2 A. Uh-huh.

3 Q. -- and he told you he was going to cut it, what
4 did he do with the knife then?

5 A. He asked me: Does it get hard, and he did this
6 (indicating).

7 Q. Did what with what?

8 A. With the knife like this (indicating).

9 Q. Okay. And did he also nick you on your
10 testicle?

11 A. No, not on the testicle.

12 Q. Did he nick you anywhere on your private parts?

13 A. No. He left a mark on my penis, not on the
14 testicles.

15 Q. Okay. When he was doing that, were you scared?

16 A. A little.

17 Q. Were you afraid he was going cut you?

18 A. Yes. There, yes.

19 Q. At some point, were you tied up?

20 A. Yes.

21 Q. When did that happen?

22 A. When I was taken to the bathroom.

23 Q. And what were you tied up with?

24 A. With a coat hanger wire.

25 Q. And did he put your hands in front of you or

1 behind you?

2 A. In back.

3 Q. And did you stayed tied up for the rest of time
4 you were in captivity?

5 A. Yes, trying to get lose.

6 Q. When you got in the bathroom and you saw
7 Andres, did you notice anything about him?

8 A. Yes. He had been beaten.

9 Q. Did he look pretty bad?

10 A. Yes.

11 Q. What happened next?

12 A. We stayed in the bathroom for a short time.

13 Q. Then what happened?

14 A. Then we were brought Kentucky Fried Chicken.

15 Q. Okay. Did you eat it?

16 A. I didn't eat.

17 Q. Did Andres eat?

18 A. Andres ate something. He ate some poached
19 eggs.

20 Q. Do you know how long y'all had been held when
21 you were brought that food?

22 A. We had been there for quite a while.

23 Q. Who brought the food to you?

24 A. They did, the people that were there with him.

25 Q. Okay. Was it Obel Cruz-Garcia or one of the

1 other guys who was helping him?

2 A. The ones that were with him. I really didn't
3 see their faces from the bathroom.

4 Q. Okay.

5 A. When the lights were on -- even though I had
6 the pillowcase over my face, with the light on I could
7 still see something.

8 Q. When did the pillowcase go back over your head?

9 A. When the people that were with him were going
10 to come in, the people that were with Obel so that we
11 couldn't see.

12 Q. Okay. So, you were in the bathroom --

13 A. Uh-huh.

14 Q. -- and whenever --

15 A. With Andres.

16 Q. With Andres. And whenever someone would come
17 into the bathroom, one of his helpers, they would make
18 you put the pillowcase on before they came in?

19 A. Yes, at times.

20 Q. The rest of the time, you didn't have the
21 pillowcase on your head?

22 A. No. After that, no.

23 Q. What happened next? Do you remember -- let me
24 ask you this. Do you remember a point when you were
25 able to talk to your stepfather on the phone?

1 A. No.

2 Q. You don't remember that at all?

3 A. No.

4 Q. Do you remember much about that time that you
5 were in the bathroom?

6 A. Yes. Well, I was there for quite a while.

7 Q. Okay. Did you really kind of lose track of
8 time?

9 A. No.

10 Q. Were you hurting?

11 A. My body hurt somewhat. It was uncomfortable.

12 Q. Do you remember times where the defendant would
13 tell you he was going to kill you?

14 A. Yes.

15 Q. Did you believe him?

16 A. Well, of course.

17 Q. Did you think you were going to get out of that
18 alive?

19 A. I didn't believe that.

20 Q. Do you remember the defendant leaving for a
21 period of time and leaving you with someone named Pablo?

22 A. Pablo, yes.

23 Q. And do you remember ultimately being released?

24 A. Yes.

25 Q. Okay. Before you were released, you and Andres

1 had some discussion about trying to escape?

2 A. Yes.

3 Q. Whose idea was that?

4 A. I told him.

5 Q. What was your thought and your plan for trying
6 to escape?

7 A. Well, my thoughts were to open the door and
8 defend ourselves because there was just one person
9 there.

10 Q. Okay. And had something actually been put on
11 the door to make noise in case you opened it?

12 A. Some wire.

13 Q. Okay. So, they rigged some wire on the door so
14 it make a noise?

15 A. Yes, if we tried to open it.

16 Q. Okay. When you were talking about or thinking
17 about escaping, did Andres want to do that?

18 A. No, he didn't want to.

19 Q. What did he want to do instead?

20 A. He said that we should start praying and wait.

21 Q. And that's what you did?

22 A. Yes, between the two of us.

23 Q. Ultimately, you were released?

24 A. Yes.

25 Q. And do you remember how that happened?

1 A. When they let us go?

2 Q. Uh-huh.

3 A. Yes. Pablo let us go.

4 Q. Okay. How did he let you go? Did he take you
5 somewhere?

6 A. He placed the pillowcases, once again, on our
7 heads. He took us out to the car, got us in, and then
8 the car went to the corner, like to here, and he told us
9 to get out, to run, and not to take off the pillowcases.

10 Q. Did you follow his instructions?

11 A. Yes.

12 Q. What happened next?

13 A. We went out to the avenue.

14 Q. Were you able to locate some police officers to
15 help you?

16 A. We walked a lot and then when we got to the
17 other avenue, a patrol car came by.

18 Q. And what happened?

19 A. He asked us what had happened and we told him
20 and then we were put into the patrol car and we were
21 taken to the police station.

22 Q. Later on, do you remember being asked to
23 identify Obel Cruz-Garcia as the individual who
24 kidnapped you that day?

25 A. That same day?

1 Q. No. Later.

2 A. Yes, later.

3 Q. Okay. Several days later, in fact. Correct?

4 A. More or less, two to three days.

5 Q. And were you able to identify him?

6 A. Yes.

7 Q. And that's the same man you've identified here
8 in court today?

9 A. Yes.

10 Q. And you know that there were court proceedings?

11 A. What do you mean?

12 Q. Well, the court took his case, right?

13 A. There in Puerto Rico?

14 Q. Yes.

15 A. Yes. What do you mean that they accepted it?

16 Q. Well, did it -- was there a case that was filed
17 against him?

18 A. Yes.

19 Q. And he was convicted of what he did to you,
20 wasn't he?

21 A. Yes. Yes, he was.

22 Q. And he was sent to prison?

23 A. Yes.

24 Q. And he would come up for parole every so often?

25 A. Yes.

1 Q. And you would go to those hearings, wouldn't
2 you?

3 A. Yes, I went.

4 Q. Why?

5 A. Because at that time we didn't want him to get
6 back out on the street.

7 Q. And that was important to you?

8 A. We wanted him to serve out what they had given
9 him.

10 MS. TISE: I will pass the witness.

11 THE COURT: Thank you, Ms. Tise.

12 Mr. Cornelius.

13 MR. CORNELIUS: Just a moment if I might,
14 Judge.

15 THE COURT: Yes.

16 (Pause)

17 MR. CORNELIUS: We'll reserve our cross,
18 Judge.

19 THE COURT: And so, Mr. Martinez, you may
20 step down. You're excused subject to being recalled,
21 sir.

22 Okay. Please call your next.

23 MR. WOOD: The State calls Officer Efrain
24 Esmurria.

25 THE COURT: Has this witness been sworn?

1 MR. WOOD: He has, Your Honor.

2 THE COURT: Sir, please keep your voice up
3 and speak into the microphone.

4 THE WITNESS: Okay.

5 THE COURT: One second.

6 (Pause)

7 THE COURT: You may proceed, Mr. Wood.

8 MR. WOOD: Thank you, Your Honor.

9 **EFRAIN ESMURRIA HERNANDEZ,**
10 having been first duly sworn, testified through the
11 interpreter as follows:

12 **DIRECT EXAMINATION**

13 **BY MR. WOOD:**

14 Q. Good afternoon, Mr. Esmurria.

15 A. Good afternoon.

16 Q. Can you introduce yourself with your full name
17 for the ladies and gentlemen of the jury, please?

18 A. Mr. Efrain Esmurria Hernandez.

19 Q. Is it okay if I call you Mr. Esmurria or --

20 A. Officer.

21 Q. Officer.

22 Okay. Officer, tell us how you were
23 employed.

24 A. Department of Corrections and Correctional
25 Institution of Guayama, Puerto Rico.

1 Q. And how -- are you from Puerto Rico?

2 A. Yes.

3 Q. Have you lived there your whole life?

4 A. Yes.

5 Q. How long have you worked as a corrections
6 officer?

7 A. Fourteen years and six months.

8 Q. And what are your current responsibilities as a
9 corrections officer?

10 A. To safeguard life and property of the Puerto
11 Rican government.

12 Q. And do you work at a particular location or how
13 are you assigned?

14 A. Guayama Correctional Complex.

15 Q. I know they are -- she's going to ask you to
16 spell that. Can you spell that?

17 A. Guayama Correctional Complex.

18 Q. Can you spell that first name?

19 A. G-u-a-y-a-m-a.

20 Q. And what do you do there at that complex?

21 A. Officer of corrections.

22 Q. Right, but what are your responsibilities?

23 A. Currently?

24 Q. Yes.

25 A. I'm the driver of an ambulance for the

1 institution.

2 Q. And do you work there on the property?

3 A. Yes.

4 Q. What other duties have you had in the past?

5 A. I have always been on medical services for
6 inmates.

7 Q. At any point in time have you had an occasion
8 to conduct examinations of cell blocks or cells?

9 A. That's correct.

10 Q. I want to take you back to October of 2003.
11 Were you working as a corrections officer at that time?

12 A. Yes.

13 Q. Were you assigned to the same facility?

14 A. What's the word? Yes, yes.

15 Q. And I want to direct your attention to October
16 10th of 2003.

17 A. Okay.

18 Q. Did you have an occasion to inspect the cell of
19 Obel Cruz-Garcia?

20 A. Correct.

21 Q. Officer, I want to ask you a couple of
22 questions about those cells first.

23 A. Okay.

24 Q. Was there a particular section of the facility
25 that the defendant was housed in?

1 A. Correct.

2 Q. And what was that section generally?

3 A. AA023.

4 Q. And is that -- was he assigned a specific cell
5 at that time?

6 A. That's correct.

7 Q. How many people were assigned to his cell?

8 A. Him and another person.

9 Q. And tell the ladies and gentlemen of the jury
10 generally how is the cell laid out.

11 A. It's divided -- well, it has a capacity of 62
12 prisoners.

13 Q. I'm sorry. I didn't catch that. How many?

14 A. It has the capacity of 62 prisoners.

15 Q. Sixty-two?

16 A. The whole section.

17 Q. Okay. And then in each cell, there are two
18 individuals or two inmates?

19 A. Only two persons on two bunkbeds.

20 Q. And what is inside of each cell?

21 A. The two beds, the toilet, and a concrete table
22 and a concrete bench, a lamp and a window.

23 Q. At that time in October of 2003, how did
24 inspections occur when you were inspecting cells?

25 A. With a rubber mallet.

1 Q. And did you conduct that by yourself or with
2 any other officer?

3 A. With another officer.

4 Q. How often would these inspections occur?

5 A. Daily at noon.

6 Q. And when you conducted an inspection like this,
7 where were the inmates placed during the inspection?

8 A. In front of the cells so they could be
9 attentive to the procedure.

10 Q. So, they were just located just right outside
11 of the cell?

12 A. Correct.

13 Q. On October 10th of 2003, you stated that you
14 had a chance to inspect the cell of Obel Cruz-Garcia and
15 his other inmate -- or his other cell mate?

16 A. Correct.

17 Q. And, Officer, do you see Obel Cruz-Garcia here
18 in the courtroom today?

19 A. Correct.

20 Q. Can you please point to him and identify
21 something that he's wearing so we know who you are
22 talking about?

23 A. The gray sports coat.

24 MR. WOOD: Your Honor, may the record
25 reflect the witness has identified the defendant?

1 THE COURT: The record will so reflect.

2 MR. WOOD: Thank you.

3 Q. (By Mr. Wood) Officer, after you had removed
4 Obel Cruz-Garcia and the other inmate or the other cell
5 mate, what did you do first?

6 A. I proceeded to perform the cell inspection at
7 the doors, the equipment they are provided with, the
8 clothing, the mattress, and the way the equipment
9 functions. Like, as of the toilet and lights. And at
10 last, the whole structure, windows, frames.

11 Q. I think before you stated that you -- in
12 inspecting cells, you used a rubber hammer; is that
13 right?

14 A. Correct.

15 Q. And did you use a rubber hammer in inspecting
16 the defendant's cell on October 10th, 2003?

17 A. Correct.

18 Q. What did you find when you were inspecting the
19 cell with the hammer?

20 A. An irregular sound on one of the window panes.

21 Q. And explain to us what you mean by that.

22 A. There is a procedure that's performed every
23 day. And at that time, when I was inspecting that
24 cell -- and part of the inspection is to hear -- the
25 was something irregular.

1 Q. And -- I'm sorry. Go ahead.

2 A. And when I hit one of the windows, the pane
3 falls.

4 Q. And was that something that should have
5 happened or was normal?

6 A. It's not normal. And the supervisor was
7 notified to report to that area.

8 Q. Now, Officer, when you found that this window
9 pane fell out, where did the window -- where did the
10 window pane fall to?

11 A. Outside.

12 Q. So, the window inside of the defendant's cell
13 went to the outside?

14 A. That's correct.

15 Q. Not into another cell or something like that?

16 A. No.

17 Q. Okay. So, you found that the window pane fell
18 out and you notified the supervisor; is that right?

19 A. Correct.

20 Q. Did you continue your inspection?

21 A. No. The procedure is stopped for the
22 supervisor and more officers to arrive to the area.

23 Q. And did that happen?

24 A. Yes, that's correct.

25 Q. Once supervisors and -- a supervisor and other

1 officers arrived, what happened next?

2 A. The supervisor orders an inspection of
3 belongings.

4 Q. And did that occur in your presence?

5 A. Yes.

6 Q. What happened at that point?

7 A. They were finding some things that were
8 prohibited at the area of cells.

9 Q. And tell us what those were.

10 A. A rope made up with bed sheets, a map of Puerto
11 Rico. And then the next thing that we proceeded to do
12 was to arrest them and take them to the admissions area.

13 Q. Okay. I will visit with you about that in a
14 minute, but let's talk about the window. Could you tell
15 what happened to the window?

16 A. There was a space left. I mean, I could fit
17 through there.

18 Q. So, a person could fit through the space that
19 had been created in the window?

20 A. Correct.

21 Q. Could you tell how the opening to that window
22 had been created or how that had happened?

23 A. Well, on plain view, you could see that it had
24 been cut.

25 Q. And if you know, only if you know, do you know

1 how it had been cut?

2 A. No.

3 Q. Let me ask you a little bit about -- you said
4 that you had discovered a rope made out of bed sheets;
5 is that correct?

6 A. Correct.

7 Q. Explain what you mean by that, a rope out of
8 bed sheets.

9 A. I image that it was made with the same bed
10 sheets that they are given and it was sort of a braid.

11 Q. In your estimation, was that designed in a way
12 that could be used to escape from that particular cell?

13 A. Correct.

14 Q. Was this particular cell of the defendant's on
15 the first floor or the second floor?

16 A. Second floor.

17 Q. And the map of Puerto Rico that you referenced.

18 A. Highways, highways with numbers.

19 Q. And where was it located?

20 A. In the area -- it was where the bed sheets were
21 piled up. That's where it was.

22 Q. And were these located in a particular bag or
23 anything like that or where were they found?

24 A. It was a bed sheet. It was made as a sack and
25 it was tied up.

1 Q. Were these two items, the rope made out of the
2 bed sheets and the map, were those permissible items for
3 one to have in their cell at that time?

4 A. No.

5 Q. When you were talking about the window pane
6 that had fallen out, was that the window pane contained
7 within the defendant and his cell mate's cell?

8 A. Correct.

9 Q. You stated that once these items were found,
10 they were taken immediately to the admissions area. Is
11 that right?

12 A. Correct.

13 Q. And what do you mean by that? What does that
14 mean?

15 A. Well, due to the findings, the area is put
16 under security under officers to avoid having any type
17 of riot or any escape.

18 Q. And when a person -- well, when Obel
19 Cruz-Garcia and his cell mate were taken to the
20 admissions area, what happened at that point?

21 A. The supervisor then ordered a -- ordered both
22 of them to be searched naked, each one of them.

23 Q. Is that common practice in that situation?

24 A. Yes.

25 Q. And were you present at that time?

1 A. Yes.

2 Q. Was there anything of note that was found
3 during the search of Obel Cruz-Garcia?

4 A. At admissions, a cell phone was found on him.

5 Q. And I know it may sound like a dumb question,
6 but is a cell phone allowed to be possessed by an inmate
7 within the facility?

8 A. It's prohibited.

9 Q. At that point, what happened next, do you know?

10 A. Obel was interrogated and he did not provide
11 any type of information. And he was kept in that area
12 and then the classification committee determined other
13 type of custody due to the findings.

14 Q. And is that also common practice, for the
15 punishment to be decided after an incident like this?

16 A. Correct.

17 Q. Would you say, Officer, that the overall
18 concern in your facility is for the safety of those in
19 the facility?

20 A. Correct.

21 Q. Does that mean the safety of fellow officers
22 like yourself?

23 A. Fellow officers and the community as well.

24 Q. And that community also includes even other
25 inmates in that facility; is not that right?

1 A. That's correct.

2 Q. And other staff that might work there?

3 A. That's correct.

4 Q. Officer, during your time as a correctional
5 officer, was this the one instance that stands out in
6 your mind related to Obel Cruz-Garcia?

7 A. No.

8 MR. WOOD: Your Honor, I'll pass with the
9 witness.

10 THE COURT: Thank you, Mr. Wood.

11 Mr. Cornelius, do you have any questions?

12 MR. CORNELIUS: Can we approach the bench?

13 THE COURT: Yes.

14 (At the bench, on the record)

15 MR. CORNELIUS: I don't know the purpose of
16 that last question. Was it to lay the predicate that
17 there are some other problems?

18 MR. WOOD: I wasn't really sure if he
19 answered to verify that question. I think he
20 misunderstood. I don't think he has any other testimony
21 related to Obel Cruz-Garcia. This was the one incident
22 that he recalled.

23 MR. CORNELIUS: You think when he said "no"
24 he meant nothing else?

25 MR. WOOD: Correct.

1 MR. CORNELIUS: If it turns out --

2 THE COURT: Let's take a break.

3 (Open court, defendant and jury present)

4 THE COURT: We're going to take a break, a
5 15-minute break.

6 THE BAILIFF: All rise.

7 (Open court, defendant present, no jury)

12 MR. CORNELIUS: Yes.

13 THE COURT: You may proceed.

14 VOIR DIRE EXAMINATION

15 BY MR. CORNELIUS:

16 Q. Officer, my name is Skip Cornelius. I'm the
17 defense lawyer, one of them, in the case.

18 A. Okay.

19 Q. You were just asked the question a moment ago
20 whether there were -- did you recall any other incidents
21 with Obel Cruz-Garcia and I didn't quite understand your
22 answer.

23 A. No. Only -- well, what's the right word?

24 | That's the only time that I had contact with him.

25 Q. Okay. All right. Thank you very much.

1 THE COURT: All right. Take a 15-minute
2 brake and we'll clear that up in front of the jury.

3 MR. CORNELIUS: Yes, ma'am.

4 (Recess)

5 (Open court, defendant and jury present)

6 THE COURT: Please be seated.

7 We're back on the record in Cause
8 No. 1384794. And we are continuing with the
9 cross-examination of the witness, Officer Efrain Esmurria
10 Hernandez.

11 You may proceed, Mr. Cornelius.

12 **CROSS-EXAMINATION**

13 **BY MR. CORNELIUS:**

14 Q. Officer, my name is Skip Cornelius. We spoke
15 briefly just before we resumed, right?

16 A. Okay.

17 Q. But we've never met before today; is that
18 correct?

19 A. No.

20 Q. The last question and answer that the
21 prosecutor asked you, I was a little concerned about.
22 So, let me ask it my way. The incident that you've
23 testified about from October 10th, 2003, is that the
24 only incident that you had any connection with my
25 client?

1 A. That's correct.

2 Q. Okay. Now, I want to talk to you for a moment
3 about the window that was in the jail cell back in
4 October of 2003. First of all, what is the window made
5 out of?

6 A. Metal.

7 Q. Made out of metal?

8 A. Correct.

9 Q. And what's the purpose of the window?

10 A. Ventilation and safety.

11 Q. Okay. So, is part of this window open so that
12 air can go through it?

13 A. Correct.

14 Q. All right. And when you -- can you look
15 through the window?

16 A. Yes.

17 Q. And if you are in the jail cell looking through
18 the window, what do you see on the other side of the
19 window?

20 A. Woods.

21 Q. What do you see if you look through that
22 window?

23 A. Looking outside or looking inside the cell?

24 Q. From inside the cell looking through the
25 window, what would you see?

1 A. A wooded area, trees, vegetation.

2 Q. So, the window faces outside of the
3 correctional facility there?

4 A. It's at the perimeter of the institution and
5 what you see is trees and the wooded area.

6 Q. Okay. I'm looking at the - well, are you sure
7 the window doesn't go towards the inside of the
8 facility?

9 A. No.

10 Q. No, it doesn't or --

11 A. There is a perimeter, there is a free space,
12 two railings, and then the wooded area.

13 Q. Does the facility have windows on the outside
14 of the facility?

15 A. No.

16 Q. Okay.

17 MR. CORNELIUS: May I approach the witness?

18 THE COURT: Yes.

19 Q. (By Mr. Cornelius) Is this the facility we are
20 talking about right here (indicating)?

21 A. No.

22 Q. Okay. Well, I must have the wrong name.

25 MR. CORNELIUS: Can I approach the witness

1 again?

2 THE COURT: Yes.

3 Q. (By Mr. Cornelius) This is it, right? That's
4 not the facility at all (indicating)?

5 A. No.

6 Q. That's not the right name?

7 A. That is Bayamon 1000. That is the maximum
8 security facility. He was located at Guayama 500.

9 Q. Okay. But is Guayama 500 also within this same
10 correctional institution?

11 A. They are four institutions in the same complex.
12 He was located in one of them.

13 Q. Okay. So, the one I'm showing you is not the
14 one he was in, but that is Guayama, correct?

15 A. No. That's one of the institutions that is in
16 the complex.

17 Q. It's one of the institutions within the
18 complex?

19 A. It's one of the institutions within the
20 complex.

21 Q. So, there are four different buildings or
22 institutions within the complex?

23 A. Correct.

24 Q. Okay. And they don't have windows that face
25 the outside world, do they?

1 A. The window at the area where he was, was facing
2 mountains and trees.

3 Q. Are they -- okay.

4 THE COURT: Mr. Cornelius, could I ask you
5 to sit down just so the jurors can make sure to hear the
6 interpreter?

7 MR. CORNELIUS: Sure, Judge.

8 THE COURT: Thank you.

9 You may proceed.

10 Q. (By Mr. Cornelius) Let me ask it this way. The
11 annex 500 is the one you are talking about, correct?

12 A. Correct.

13 Q. How many stories is it?

14 A. Two.

15 Q. Okay. And you're saying the cell we are
16 talking about is on the second story?

17 A. Correct.

18 Q. So, the window on the second story, when you
19 look out, can you see over the rest of the prison and
20 see mountains and trees and all that stuff?

21 A. On plain sight?

22 Q. Yes.

23 A. Yes.

24 Q. Okay. But the window in question, if you jump
25 out that window, where would you land? Would you land

1 in the free-world or still in the institution?

2 A. Within the institution.

3 Q. Okay. So, it's not a situation where if
4 someone were to remove that window they could just jump
5 out and take off running and be in the free-world,
6 right?

7 A. It will be landing on a restricted area because
8 it has locks and chains.

9 Q. Okay. So, the purpose of the window is mostly
10 for ventilation; is that what you said?

11 A. It's mainly for ventilation, but it had been
12 tampered with. And if it's tampered, property has
13 already been broken.

14 Q. Yeah, I understand that. But the purpose for
15 the window is not being tampered with, but the main
16 purpose of the window is for ventilation?

17 A. Ventilation because it does not have AC.

18 Q. Okay. And how much space is there open for
19 ventilation all the time?

20 A. Four.

21 Q. I'm sorry?

22 A. Four.

23 Q. Four different spaces?

24 A. Four panes that when open, they leave four
25 spaces. And when shut, then it's -- still it cannot be

1 seen to the outside.

2 Q. Is the total size of the window approximately
3 2 feet by 3 feet?

4 A. That is unknown to me. I don't know about the
5 measurements.

6 MR. CORNELIUS: Can I approach the witness,
7 Judge?

8 THE COURT: Yes.

9 Q. (By Mr. Cornelius) Is this by any chance a
10 report that you assisted in writing (indicating)?

11 A. Correct. That's a complaint to the Puerto
12 Rican police.

13 Q. And what do these measurements right here
14 reflect? What do these measurement right here reflect
15 (indicating)?

16 A. Measurements.

17 Q. Of what?

18 A. That's unknown to me.

19 Q. Okay. Maybe I'm not understanding you, sir.
20 But read this little paragraph here to yourself.

21 MR. WOOD: Your Honor, I object to this
22 witness using this document to refresh his memory if it
23 isn't a document that he prepared. I think it was his
24 testimony that it was just a report of the incident.

25 MR. CORNELIUS: I will ask him.

1 Q. (By Mr. Cornelius) Did you help prepare this
2 report?

3 A. No.

4 Q. Okay. All right. So, you understand what it
5 says, but you didn't write it. Is that what you're
6 saying?

7 THE COURT: That's sustained.

8 A. No.

9 Q. (By Mr. Cornelius) Were there any photographs
10 made of this incident?

11 A. That is my understanding, but I'm not involved
12 with that.

13 Q. Okay. And did you write any report with
14 respect to this?

15 A. Only the part that I was in during the
16 operation, the inspection of the cell.

17 0. You wrote a report on that?

18 A. Yes.

19 0. Did you bring it with you?

20 A. It's with the documents that I have outside.

21 MR. CORNELIUS: May I see that, Judge?

22 THE COURT: Does the State have a copy of
23 that?

24 MR. WOOD: Judge, the only incident report
25 that we were aware of that related to this incident was

1 the one that defense counsel has.

2 THE COURT: Okay. All right. Well, let's
3 take another five-minute break and get this dealt with.
4 Take out the jury, please.

5 (Open court, defendant present, no jury)

6 THE COURT: Officer, why don't you step
7 down and get your report and tender it to the
8 prosecutor, please.

9 (Recess)

10 (Open court, defendant and jury present)

11 THE COURT: Please be seated.

12 Back on the record in Cause No. 1384794.
13 We're ready to proceed with the cross-examination of
14 Officer Efrain Esmurria Hernandez.

15 You may proceed, Mr. Cornelius.

16 Q. (By Mr. Cornelius) Officer, the one handwritten
17 page is the part of the report that you actually wrote
18 yourself?

19 A. Correct.

20 Q. All right. And so, you personally did not
21 measure the window?

22 A. No.

23 Q. Okay. And the other things that you've
24 testified to to this jury, somebody else wrote them
25 down, you just saw them happen, like the search and

1 stuff like that?

2 A. I do not understand the question.

3 Q. You told the jury, for example, about a body
4 search or strip search.

5 A. Yes.

6 Q. That's not something you wrote about in your
7 report. I guess, it wasn't your responsibility. Is
8 that correct?

9 A. I was present as an observer, but it was my
10 supervisor who present during that search and he drafted
11 a report and it contains that information.

12 Q. Okay. The window has four panes. Is that what
13 you've told us?

14 A. Correct.

15 Q. Did all four panes come out or just one?

16 A. All four opened.

17 Q. Well, did all four fall out, though?

18 A. Only one.

19 Q. Okay. And you don't know the entire size of
20 that window, correct?

21 A. I don't know the numbers, but it's a big size.

22 Q. So, 2 feet by 3 feet?

23 A. I cannot answer that.

24 Q. Okay. All right. One of the panes fell out of
25 four. You don't know what size the window is, correct?

1 A. Correct.

2 Q. Do the four panes all open up?

3 A. There are only three panes left to open because
4 there is a space -- open space left.

5 Q. Okay. Well, if all three panes are in there
6 the way -- if all four panes are in there the way they
7 are supposed to be and the window is operating
8 correctly, do they all open?

9 A. They do.

10 Q. Who controls when they can be opened and when
11 they can't be open?

12 A. The inmates.

13 MR. CORNELIUS: All right. Pass the
14 witness.

15 THE COURT: Thank you, Mr. Cornelius.

16 Anything further, Mr. Wood?

17 MR. WOOD: I have nothing further.

18 THE COURT: May the witness be excused?

19 MR. CORNELIUS: Yes, Your Honor.

20 MR. WOOD: Yes, Judge.

21 THE COURT: Officer, you're excused. You
22 may step down.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you.

25 Ladies and gentlemen, we're going break for

1 the day. It's a little bit after 5:00. It's been a
2 long day and I expect that tomorrow will be a full day
3 as well. I would like to start at 10:00 and go to 5:30
4 or 6:00, whatever we need to do to get the testimony in
5 for tomorrow. So, if you can come prepared to do that.

6 And I want to remind you that you are not
7 to talk amongst yourselves or with anyone else on any
8 subject connected with the trial or to form or express
9 any opinion thereon until the end of the trial. And
10 just so I can be a little more clear on that, don't
11 discuss -- not only the evidence, but don't discuss any
12 of your deliberations or anything when you are apart as
13 a juror and specifically when you are not back there in
14 the jury deliberation room being ordered to deliberate
15 and discuss it. Okay?

16 And with that, I'm going to release you to
17 the deputy and we'll see at 10:00 in the morning.

18 THE BAILIFF: All rise.

19 (Open court, defendant present, no jury)

20 THE COURT: We're in recess till 10:00 in
21 the morning.

22 (Proceedings recessed)

23

24

25

REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF HARRIS)

4 I, Mary Ann Rodriguez, Official Court Reporter in
5 and for the 337th District Court of Harris County, State
6 of Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested in
9 writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of
14 the proceedings truly and correctly reflects the
15 exhibits, if any, admitted by the respective parties.

16 WITNESS MY OFFICIAL HAND this the 14th day of
17 October, 2013.

21 /s/ Mary Ann Rodriguez
22 Mary Ann Rodriguez, Texas CSR 3047
23 Expiration Date: 12/31/2013
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27 Houston, Texas 77002
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